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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 SARAH ARMSTRONG and ROBERT
16 WALLACE, individuals, on behalf of
17 themselves and on behalf of all persons
18 similarly situated,

19 Plaintiffs,

20 vs.

21 PROMETRIC LLC, a Limited Liability
22 Company, and DOES 1 through 50,
23 inclusive,

24 Defendants.

Case No. 20STCV29967

**SUPPLEMENTAL DECLARATION OF
KYLE NORDREHAUG IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: January 5, 2022

Hearing Time: 9:00 a.m.

Judge: Hon. Maren E. Nelson

Dept: SS-17

Action Filed: August 7, 2020

Trial Date: Not Set

1 I, Kyle Nordrehaug, declare as follows:

2 1. I am a partner of the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP,
3 counsel of record for Plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) in this matter.
4 As such, I am fully familiar with the facts, pleadings and history of this matter. The following facts
5 are within my own personal knowledge, and if called as a witness, I could testify competently to the
6 matters stated herein.

7 2. This supplemental declaration is being submitted in support of the Plaintiffs’ motion
8 for preliminary approval of the proposed settlement with Defendant Prometric LLC (“Defendant”),
9 and to address the issues identified in the ruling dated August 18, 2021.

10
11 First Amended Class Action Settlement Agreement:

12 3. To address issues identified by the Court’s tentative ruling, the Parties have revised
13 the settlement agreement and executed a First Amended Class Action Settlement Agreement
14 (“Agreement”), a true and correct copy of which is attached hereto as Exhibit #1. As instructed by
15 the Court, a true and correct copy of a redline showing the revisions made to the Agreement and to
16 the exhibits thereto is attached hereto as Exhibit #2.

17
18 Dunk / Kullar Analysis:

19 4. The damage analysis presented to the Court in the motion for preliminary approval
20 (page 10) was the analysis prepared by Berger Consulting for Plaintiffs based upon pay data and the
21 actual time punch data for 233 employees and 39,383 shifts. The Declaration of Pam DiFonso then
22 verified that the Class consists of 250 employees who worked 47,405 shifts. As such, Class
23 Counsel analyzed actual data for 93% of the individuals in the class and 83% of the shifts for the
24 Class. Plaintiffs therefore submit that the information sufficiently covered the Class and because
25 this information covered nearly everyone in the Class, statistical significance was not a concern.
26 The information received was in the form of spreadsheets which provided the following (1) a list of
27 233 employees evidencing their dates of employment and their payroll / paycheck information, (2)
28

1 time punch data showing time worked and meal periods (punch in and punch out) for 39,383 shifts,
2 and (3) detail concerning Defendant's payment of expense reimbursement to Class Members during
3 the Class Period. The average hourly rate was \$15.69 and was derived from the payroll data.

4 Finally, Class Counsel received the policy manual applicable to the Class, approximately 70 wage
5 statements provided to Plaintiffs during the Class Period, and the employment file for each Plaintiff.

6 5. Plaintiffs' motion addressed the PAGA claim valuation in paragraph 33 of the
7 initial Declaration of Nordrehaug filed in support of the motion for preliminary approval on July 27,
8 2021.

9
10 Class Definition:

11 6. The definitions of the Class, Collective Members, and Aggrieved Employees exclude
12 individuals who previously released wage and hour claims as part of a general release of claims.
13 This exclusion is intended to prevent such individuals from receiving a double-recovery at the
14 expense of other class members. Individuals who have already released wage and hour claims that
15 overlap with this settlement for the class period should not be allowed to participate in the
16 settlement because they have already received consideration for signing a general release of such
17 claims. However, as of August 5, 2021, there were no such individuals in the class, and Defendant
18 did not engage in a *Pick-Up Stix* campaign before the settlement. If any class members enter into a
19 general release of claims outside of this settlement, they will be excluded from participation in the
20 settlement

21
22 Scope of Release:

23 7. The release of class claims has been revised in the Agreement to specifically refer to
24 the First Amended Complaint.

25 8. **Defendant's Position** - Defendant maintains that the revised class and collective
26 release language is appropriate. Certain courts object to the inclusion of a Section 1542 waiver in a
27 class settlement because Section 1542 applies on its face to a general release of claims, and the
28

1 class typically does not provide a general release. However, nothing in Section 1542 or applicable
2 case law prohibits class members from waiving unknown claims that are tied to the facts alleged in
3 the class action complaint. Instead, in a class action settlement, "[a] clause providing for the release
4 of claims . . . may refer to all claims, both potential and actual, that may have been raised in the
5 pending action with respect to the matter in controversy." *Villacres v. ABM Industries Inc.*, 189 Cal.
6 App. 4th 562, 586 (2010). A court may release not only those claims alleged in the complaint and
7 before the court, but also claims which "could have been alleged by reason of or in connection with
8 any matter or fact set forth or referred to in" the complaint." *Id.* Thus, if a class member is not
9 aware of a potential claim arising out of the same facts as those pled in the First Amended
10 Complaint, the class member may nevertheless waive such claims through a class action settlement.
11 Here, the scope of the release in the settlement agreement and the waiver of unknown claims is
12 more limited than a Section 1542 release. The class is not providing a general release of claims,
13 and is instead entering into a limited release of wage and hour claims that are alleged in the First
14 Amended Complaint or that are related to the facts alleged in the First Amended Complaint.
15 Because the class is not providing a general release of claims, a full Section 1542 waiver is not
16 appropriate. However, the more limited release in the settlement agreement may include a waiver
17 of unknown claims that are tied to the factual predicates pled in the First Amended Complaint.

18 9. The release applicable to the PAGA claims has been limited to the claims for
19 penalties as alleged in the Plaintiffs' LWDA Letters and the operative First Amended Complaint or
20 that reasonably relate to the factual allegations therein. The Plaintiffs' LWDA Letters dated May 7,
21 2020 and July 30, 2020 are attached hereto as Exhibits #3 and #4, respectively, which letters also
22 included a draft of the complaint. The Plaintiffs' LWDA Letters are also attached to the First
23 Amended Complaint as Exhibits 2 and 3.

24 10. The Agreement and the Class Notice have been revised to include the proposed
25 FLSA opt-in language to be included on the settlement checks.
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27
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1 Payment Formula:

2 11. The payment formula for the PAGA Payment appears in the Agreement at Section
3 III(B)(3), and provides for the PAGA Payment to be allocated as follows: “(a) seventy five percent
4 (75%) to the LWDA as the LWDA's share of civil penalties paid under this Agreement pursuant to
5 the PAGA and (b) Twenty five percent (25%) to the Aggrieved Employees, to be distributed pro
6 rata based on their respective Workdays during the PAGA Period.” As such, the PAGA Payment is
7 only being allocated to the LWDA and to the Aggrieved Employees, which are separately defined,
8 and not to all Class Members.

9
10 Notice and Notice Administration:

11 12. The Class Notice has been revised to delete the language indicating that class
12 members must use specific language to request exclusion.

13 13. The Class Notice at Section 10 informs the Class Members that the Judgment will be
14 posted on “Class Counsel's website at www.bamlawca.com under "Class Notices" for *Armstrong v.*
15 *Prometric*”.

16
17 Cy Pres Distribution:

18 14. Neither the Plaintiffs nor Class Counsel have any connection to or relationship with
19 Legal Aid at Work or Bet Tzedek Legal Services. As the cy pres beneficiaries designated in the
20 Settlement, Legal Aid at Work and Bet Tzedek Legal Services were selected by the Parties solely
21 on the basis that these organizations satisfy the standards of California Code of Civil Procedure §
22 384(b). The Declaration of Robin Samuel attesting to Defendant’s lack of any connection to or
23 relationship with these charities is attached hereto as Exhibit #5.

24 15. The distribution of funds to these cy pres recipients is appropriate because both
25 organizations are charities which provide legal services and representation to low-income
26 individuals. Bet Tzedek Legal Services provides legal services to low-income residents of Los
27 Angeles County, and Legal Aid at Work provides legal representation for low-income workers.

1 These organizations therefore fall squarely within the scope of California Code of Civil Procedure
2 384 and provide legal service benefitting workers and thus promote the legal compliance for
3 employees, which is the purpose of this lawsuit.

4 16. The residue of funds will be allocated 50% to Bet Tzedek Legal Services and 50% to
5 Legal Aid at Work. The Agreement and the Class Notice have been revised to reflect this
6 allocation.

7 17. The Class Notice has been revised to disclose the cy pre recipients.
8

9 Settlement Administrator:

10 18. The Declaration of Eric Springer on behalf of the Settlement Administrator is
11 attached hereto as Exhibit #6.
12

13 Community of Interest:

14 19. The Declaration of the Plaintiffs establishing their adequacy are attached hereto as
15 Exhibits #7 and #8.
16

17 I declare under penalty of perjury under the laws of the State of California that the foregoing
18 is true and correct. Executed this 9th day of December, 2021, at La Jolla, California.
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20
21 By: /s/ Kyle Nordrehaug
22 Kyle Nordrehaug
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EXHIBIT #1

FIRST AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This First Amended Class Action Settlement Agreement (“Agreement”) is made by and between plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) and defendant Prometric LLC (“Defendant”). Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the lawsuit filed by Plaintiffs against Defendant in the Superior Court of the State of California, County of Los Angeles, captioned *Armstrong, et al. v. Prometric, LLC* Case No. 20STCV29967, including the complaint and any amendments thereto filed in the Action.
- B. “Aggrieved Employees” means all individuals employed by Defendant in California as non-exempt employees at any time during the PAGA Period, but excluding individuals who released Defendant from wage and hour claims for the Class Period, including those wage and hour claims released as part of a general release of claims.
- C. “Class” means all individuals employed by Defendant in California as non-exempt employees at any time during the Class Period, but excluding individuals who released Defendant from wage and hour claims for the Class Period, including those wage and hour claims released as part of a general release of claims.
- D. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- F. “Class Data” means, for each Class Member, the Class Member’s name, last-known mailing address, Social Security number, employee identification number, personal email address (if known), dates of employment, Workdays worked during the Class Period as a Class Member, Workdays worked as a Collective Member, and Workdays worked during the PAGA Period.
- G. “Class Member” means a member of the Class.

- H. “Class Notice” means the Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval substantively in the form attached hereto, other than formatting changes to facilitate printing by the Settlement Administrator, as Exhibit A to this Agreement and incorporated by reference into this Agreement.
- I. “Class Period” means August 7, 2016 to July 3, 2021.
- J. “Class Representative Service Payment” means the service award authorized by the Court and paid to each Plaintiff for serving as a representative of the Class, initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiffs were unsuccessful in the prosecution of the Action, and the general release of all claims in favor of Defendant in this Agreement.
- K. “Collective Members” means all individuals employed by Defendant in California as non-exempt employees at any time during the Collective Period, but excluding individuals who released Defendant from FLSA claims for the Collective Period, including those wage and hour claims released as part of a general release of claims.
- L. “Collective Period” means August 7, 2017 to July 3, 2021.
- M. “Court” means the Superior Court of the State of California, County of Los Angeles.
- N. “Defense Counsel” means Robin Samuel and Teresa H. Michaud of Baker & McKenzie LLP.
- O. “Effective Date” means the date by which this Settlement is finally approved by the Court on the terms and conditions set forth in this Agreement and the Judgment has been entered and becomes irrevocable and binding, upon the later of: (i) in the event of a timely appeal filed by a Participating Class Member who has moved to intervene in the Action and/or moved to set aside the Judgment, the date of final affirmance of the Judgment on appeal; (ii) in the event of a timely appeal filed by a Participating Class Member who has moved to intervene in the Action and/or moved to set aside the Judgment, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on certiorari to review the Judgment; (iii) five days after the expiration date of the time for the filing or noticing of any appeal from the Judgment if any objections are served on the Settlement Administrator; or (iv) if no Participating Class Member has objected to the Settlement, moved to intervene, or moved to set aside the Judgment, the date of entry of the Judgment. For purposes of clarity, the Effective Date cannot occur, and Defendant will not be obligated to fund this Settlement, until and unless there is no possibility of an appeal or further appeal that could potentially prevent the Settlement and this Agreement from becoming final and binding.

- P. “Election Not to Participate in Settlement” means a valid and timely written request by a Class Member, submitted in accordance with the instructions in the Class Notice, to exclude himself or herself from the Settlement.
- Q. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to grant final approval to, and implement the terms of, the Settlement in this Agreement.
- R. “FLSA” means the Fair Labor Standards Act.
- S. “Individual Settlement Payment” shall mean the payment made to each Plaintiff, Participating Class Member, Participating Collective Member, and Aggrieved Employee for his or her share of the Net Settlement Amount.
- T. “Maximum Gross Settlement Amount” means the gross amount of Eight Hundred Eighty Thousand Dollars (\$880,000), which is the maximum amount to be paid by Defendant for the Settlement. The Maximum Gross Settlement Amount is a non-reversionary, “all in” payment that shall satisfy Defendant’s obligation to make any and all payments and disbursements associated with the Settlement, except for the employer’s share of payroll taxes on the Wage Portion of the Individual Settlement Payments, which shall be paid by Defendant in addition to the Maximum Gross Settlement Amount. The Maximum Gross Settlement Amount includes, but is not limited to, all Individual Settlement Payments, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and PAGA Payment.
- U. “Judgment” means the final approval order and judgment entered by the Court in the Action following the Final Approval Hearing substantially in the form attached hereto as Exhibit C.
- V. “Net Settlement Amount” means the Maximum Gross Settlement Amount less all Court-approved Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, PAGA Payment, and Settlement Administration Expenses.
- W. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- X. “PAGA” means the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*
- Y. “PAGA Period” means June 3, 2019 to July 3, 2021.
- Z. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- AA. “Participating Collective Members” means all Collective Members who timely sign, cash, deposit or otherwise negotiate a settlement check.

- BB. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- CC. “Released Parties” means Defendant and its current or past predecessors, successors, affiliates, subsidiaries, parent companies, divisions, current and past employees, insurers, agents, consultants, legal representatives, and any other related entities, and all of their past, present and future officers, shareholders, owners, members, directors, partners, agents, managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest, and underwriters.
- DD. “Response Deadline” means the forty-fifth (45th) calendar day after the Settlement Administrator mails the Class Notice. If a Class Notice is re-mailed by the Settlement Administrator, the Response Deadline for that Class Member will be the later of 15 days from the date of remailing of the Class Notice or the original Response Deadline.
- EE. “Settlement” means the settlement of the Action and all related claims in accordance with this Agreement.
- FF. “Settlement Administrator” means the third party settlement administrator jointly selected by the Parties, as approved by the Court.
- GG. “Settlement Administration Expenses” means the Settlement Administrator’s reasonable fees and expenses to carry out administration of the Settlement in an amount not to exceed \$15,000.
- HH. “Workday” means all hours of work between 12:00 a.m. and 11:59 p.m. of each day, regardless of whether Class Members took breaks or worked a continuous block of time within that day.

II. RECITALS

- A. On May 7, 2020, Plaintiff Sara Armstrong sent a letter to the Labor Workforce and Development Agency (“LWDA”) alleging that Defendant purportedly violated various provisions of the California Labor Code.
- B. On July 30, 2020, Plaintiffs Armstrong and Wallace sent an amended letter to the LWDA, alleging that Defendant purportedly violated additional provisions of the California Labor Code.
- C. On August 7, 2020, Plaintiffs filed a “Class Action Complaint” initiating the Action against Defendant in the Court. Plaintiffs asserted in the Class Action Complaint that Defendant:
1. Violated California Business and Professions Code § 17200 *et seq.*;
 2. Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1;

3. Failed to pay overtime wages in violation of California Labor Code § 510, *et seq.*;
 4. Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 5. Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 6. Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;
 7. Failed to reimburse employees for required expenses in violation of California Labor Code § 2802; and,
 8. Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203.
- D. Defendant denies all of Plaintiffs' claims asserted in the Action, and denies that Plaintiffs have been injured or damaged in any sum or manner. Defendant contends that at all times, Defendant has fully complied with all of its obligations under the California Labor Code and the applicable Wage Orders, and has properly compensated all Class Members, Collective Members and Aggrieved Employees.
- E. On March 3, 2021, the Parties participated in an all-day mediation presided over by David Rotman, a highly experienced and respected mediator of wage and hour representative and class actions. Following the mediation, the Parties, represented by their respective counsel, were able to reach agreement on the terms of a settlement of the Action, with the settlement terms memorialized in a Memorandum of Understanding.
- F. Before seeking Preliminary Approval of the Settlement, Plaintiffs will file and serve a First Amended Complaint in the Action pursuant to a stipulation of the Parties. In addition to the facts, causes of action, and claims asserted in the Class Action Complaint, the First Amended Complaint will assert factual predicates and causes of action for alleged violations of the minimum wage, overtime and recordkeeping provisions of the FLSA. The First Amended Complaint also will assert PAGA claims and alleged PAGA violations based on all of the factual and legal allegations asserted in the Action, or that could have been asserted in the Action, based on the facts and claims alleged in the Class Action Complaint and the PAGA notices served by Plaintiffs on Defendant and the LWDA on May 7, 2020 and July 30, 2020. Plaintiffs will file and serve the First Amended Complaint within ten (10) court days from the execution by all Parties of this Agreement.
- G. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of wrongdoing or liability for the claims asserted in the

Action, or that any of the asserted claims or causes of action have legal or factual merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Maximum Gross Settlement Amount.** Subject to the terms and conditions of this Agreement and Court approval, Defendant shall deposit the Maximum Gross Settlement Amount into the QSF established by the Settlement Administrator within fifteen (15) days of the Effective Date. All of the Maximum Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Maximum Gross Settlement Amount will revert to Defendant.
- B. **Payments from the Maximum Gross Settlement Amount.** Subject to the terms and conditions of this Agreement and Court approval, the Settlement Administrator will make the following payments from the Maximum Gross Settlement Amount after the Effective Date:
 - 1. **To Plaintiffs:** In addition to the Individual Settlement Payments to be paid to each Plaintiff as a Participating Class Member, each Plaintiff will apply to the Court for, and Defendant will not oppose, an award of a Class Representative Service Payment in the amount of \$10,000, which is combined total of \$20,000 in Class Representative Service Payments. The Settlement Administrator will pay the Class Representative Service Payments awarded by the Court out of the Maximum Gross Settlement Amount within thirty (30) days of the Effective Date. If the Court awards Class Representative Service Payments of less than \$10,000 for each Plaintiff, the difference will remain part of the Net Settlement Amount that will be distributed pro rata to Participating Class Members and Collective Members. The Class Representative Service Payments will be made by the Settlement Administrator without tax withholding or deductions, and will be reported by the Settlement Administrator to each Plaintiff on a Form 1099. Each Plaintiff shall be exclusively and solely responsible for any and all taxes and withholdings owed on the Class Representative Service Payments. Each Plaintiff acknowledges and agrees that the Class Representative Service Payments serve as consideration for the general release of all claims, including a waiver of unknown claims and similar rights under California Civil Code section 1542, granted by each Plaintiff to Defendant under this Agreement.
 - 2. **To Class Counsel:** Class Counsel will apply to the Court for, and Defendant will not oppose, an award of not more than one third (33%) of the Maximum Gross Settlement Amount, as the Class Counsel Fees Payment. Class Counsel also will apply to the Court for an award of not

more than \$25,000 for all expenses incurred in the Action and documented in Class Counsel's records as the Class Counsel Litigation Expenses Payment. The Settlement Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment awarded by the Court out of the Maximum Gross Settlement Amount within thirty (30) days of the Effective Date. If the Court awards a Class Counsel Fees Payment of less than one third of the Maximum Gross Settlement Amount, or a Class Counsel Litigation Expenses Payment of less than \$25,000, the difference will remain part of the Net Settlement Amount that will be distributed pro rata to Participating Class Members and Collective Members. The Class Counsel Fees Payments and Class Counsel Litigation Expenses Payments will be made by the Settlement Administrator without tax withholding or deductions, and will be reported by the Settlement Administrator to Class Counsel on a Form 1099. Class Counsel shall be exclusively and solely responsible for any and all taxes and withholdings owed on the Class Counsel Fees Payments and Class Counsel Litigation Expenses Payments.

3. **To the Aggrieved Employees and LWDA.** Plaintiffs will seek approval from the Court to allocate \$30,000 of the Maximum Gross Settlement Amount (the "PAGA Payment") to the settlement of the PAGA claims asserted in the First Amended Complaint. The PAGA Payment approved by the Court shall be allocated and paid by the Settlement Administrator within thirty (30) days of the Effective Date as follows: (a) seventy five percent (75%) to the LWDA as the LWDA's share of civil penalties paid under this Agreement pursuant to the PAGA and (b) Twenty five percent (25%) to the Aggrieved Employees, to be distributed pro rata based on their respective Workdays during the PAGA Period. If the Court approves a PAGA Payment of less than \$30,000, the difference will remain part of the Net Settlement Amount that will be distributed pro rata to Participating Class Members and Collective Members. The Settlement Administrator will determine, in its sole discretion, how to classify and report the PAGA Payments to Aggrieved Employees for tax purposes. The PAGA Payments will be made to the Aggrieved Employees regardless of whether they are Participating Class Members.
4. **To the Settlement Administrator.** Plaintiffs will seek approval from the Court for authorization to pay the Settlement Administration Expenses from the Maximum Gross Settlement Amount. The Settlement Administrator will deduct the Settlement Administration Expenses approved by the Court from of the Maximum Gross Settlement Amount within thirty (30) days of the Effective Date, and will report the payment to the Settlement Administrator on a Form 1099. If the Court approves Settlement Administration Expenses of less than \$15,000, the difference will remain part of the Net Settlement Amount that will be distributed pro rata to Participating Class Members and Collective Members.

C. **Payments from the Net Settlement Amount.** Subject to the terms and conditions of this Agreement and Court approval, the Settlement Administrator will calculate and pay the Individual Settlement Payment for each Participating Class Member from the Net Settlement Amount after the Effective Date.

1. **Calculation.** Each Participating Class Member's Individual Settlement Payment will be calculated as follows:

- a. The Net Settlement Amount shall be divided by the total Workdays for all Participating Class Members to determine the "Workday Payment Amount."
- b. The gross amount of each Participating Class Member's Individual Settlement Payment shall be calculated by multiplying the Participating Class Member's individual Workday total by the Workday Payment Amount.

2. **Taxes and Withholding.**

- a. Twenty five percent (25%) of each Participating Class Member's Individual Settlement Payment shall be allocated to the settlement of wage claims (the "Wage Portion"). The Wage Portion shall be subject to tax withholdings and deductions and reported by the Settlement Administrator to each Participating Class Member on a Form W-2. The Settlement Administrator shall be responsible for calculating, withholding and remitting to the relevant tax authorities all tax withholdings and deductions on the Wage Portion, including the employer's share and employee's share of such taxes and withholdings.
- b. Seventy five percent (75%) of each Participating Class Member's Individual Settlement Payment shall be allocated to the settlement of claims for non-wage interest and statutory penalties (the "Non-Wage Portion"). The Non-Wage Portion will not be subject to tax withholdings or deductions, and will be reported by the Settlement Administrator to each Participating Class Member on a Form 1099.
- c. Plaintiffs, Class Counsel, and Participating Class Members shall be solely responsible for all taxes associated with the their Individual Settlement Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, their share of the PAGA Payment, and Class Representative Service Payments, except for the employer's share of payroll taxes on the Wage Portion of the Individual Settlement Payments.
- d. The employee portion of applicable income taxes for the Wage Portion and any tax responsibility for the Non-Wage Portion or other payments shall be the sole responsibility of each

Participating Class Member. The Class Notice shall advise Class Members to seek tax advice regarding any tax consequences of the Settlement.

- e. The Participating Class Members agree to hold harmless Defendant, Class Counsel, and Defense Counsel for any tax liability, including penalties and interest, arising out of or relating to any Participating Class Member's failure to report or pay taxes on any amounts paid pursuant to this Settlement.
- f. The Settlement Administrator shall be solely responsible for making required and proper tax withholdings and complying with tax reporting obligations.

3. **Class Members Who Opt Out Of Settlement.** Non-Participating Class Members will not receive an Individual Settlement Payment. The portion of the Net Settlement Amount that would have been allocated to Non-Participating Class Members but for their submission of an Election Not to Participate in Settlement will remain part of the Net Settlement Amount available for distribution to Participating Class Members.

4. **Collective Members Who Do Not Cash or Negotiate Checks.** If, for any reason, Collective Members do not cash or negotiate their Individual Settlement Payments, such Individual Settlement Payments shall be voided by the Settlement Administrator and shall not be redistributed to Class Members, but shall instead be donated to the Cy Pres Recipients pursuant to section III(E)(10) of this Agreement.

5. **Class Size Modification.** According to Defendant's records, there are approximately 241 Class Members who worked an estimated 63,500 Workdays during the Class Period. Defendant will provide a declaration in conjunction with the filing of the Motion for Preliminary Approval confirming the number of Class Members and estimated Workdays during the Class Period. In no event shall the total payments to the Class Members exceed the Net Settlement Amount. However, should the total number of Workdays in the Class Period increase by more than ten percent (10%) above 63,500, Defendant will pay an additional amount on top of the Net Settlement Amount so that the Net Settlement Amount shall increase by a percentage equal to the percentage increase in total Workdays over 63,500 less ten percent (10%).

D. **Appointment of Settlement Administrator.** The Parties will obtain three quotes from mutually acceptable and qualified settlement administrators to choose the Settlement Administrator. In the Motion for Preliminary Approval, the Parties will ask the Court to appoint the Settlement Administrator to administer the Settlement. As a condition of appointment, the selected Settlement Administrator will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class Members;

conducting a National Change of Address search to update Class Member addresses before mailing the Class Notices; re-mailing Class Notices that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notices and receipt of completed Elections Not to Participate in Settlement; calculating Individual Settlement Payments; issuing the checks to effectuate the payments due under the Settlement; making proper tax withholdings and complying with tax reporting obligations, including preparing, delivering and filing all necessary tax forms, returns, notices and reports required to effectuate the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice, will be paid out of the Maximum Gross Settlement Amount.

The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1 and Employer Identification Number for the Settlement in order to calculate payroll withholdings for taxes, and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities.

E. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

- a. Within twenty one (21) days of execution of this Settlement Agreement, Plaintiffs will file a Preliminary Approval Motion with the Court to seek an order preliminarily approving the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval").
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit a proposed "Order Granting Preliminary Approval of the Settlement" substantially in the form evidenced by Exhibit B to this Agreement.
- c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court, including whether the proposed Settlement should proceed.

2. Notice to Class Members. After the Court enters an Order Granting Preliminary Approval of the Settlement, each Class Member will be sent

the Class Notice revised to conform to the Order Granting Preliminary Approval of the Settlement as follows:

- a. No later than 14 days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. The Settlement Administrator will maintain the confidentiality of the Class Data, and will not disclose the information to anyone, except (i) as required to applicable taxing authorities; (ii) in order for the Settlement Administrator to carry out the reasonable efforts described in section III(E)(2)(b) and III(E)(2)(c); or (iii) pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and administration only. This provision shall not be construed to impede Class Counsel's ability to discharge their fiduciary duties to the Class, and if additional disclosures are necessary, Class Counsel will obtain written authorization of Defendant and/or an order from the Court.
- b. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice. The Settlement Administrator will send the Class Notice via first-class regular United States mail to all Class Members using the updated mailing address information and no later than 14 days after receiving the Class Data.
- c. If a Class Notice is returned as undeliverable without a forwarding address, the Settlement Administrator will promptly, and no later than fourteen (14) days from receipt of the returned Class Notice, conduct one skip-trace address search for a more current address for the Class Member and re-mail the Class Notice to the Class Member if a new address is found. If a Class Notice is returned as undeliverable but with a forwarding address, the Settlement Administrator will promptly, and no later than seven (7) business days from receipt of the returned Class Notice, re-mail the Class Notice to the Class Member using the forwarding address. If the Class Notice is re-mailed, the Response Deadline for that Class Member will be extended by 15 days from the date of the original Response Deadline, and the extended Response Deadline will be set forth in the re-mailed Class Notice and the Settlement Administrator will note for its own records and notify Class Counsel and Defense Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.
- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defense Counsel of the number of

valid and deficient Elections Not to Participate in Settlement it receives and number and content of each objection received.

- e. Not later than 10 days before the date by which the Plaintiffs file the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections Not to Participate) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Disputes as to Allocated Workdays; Elections Not to Participate in Settlement.** Class Members may submit objections to the Settlement, disputes as to the number of Workdays allocated to Class Members, and Elections Not to Participate in Settlement pursuant to the following procedures:

- a. **Objections to Settlement.** Only Participating Class Members may object to the Settlement, including but not limited to the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments specified in the Settlement. The Class Notice shall inform Class Members that Participating Class Members may object to the Settlement either in writing or orally at the Final Approval Hearing. Written objections must be submitted to the Settlement Administrator by the Response Deadline, and if mailed, must be postmarked no later than the Response Deadline. Written objections shall set forth the grounds for each objection and comply with the instructions in the Class Notice, however a written objection shall not be per se invalid simply because it does not contain all of the information requested. Written objections may also be faxed or emailed to the Settlement Administrator as indicated in the Class Notice. Participating Class Members may appear at the Final Approval Hearing to orally object to the Settlement. Non-Participating Class Members shall not be entitled or eligible to comment on or object to the Settlement.
- b. **Disputes as to Workday Allocation.** Each Class Member may dispute the number of Workdays allocated to the Class Member in the Class Notice. Any notice of dispute must be received by Settlement Administrator by the Response Deadline, and shall be resolved by the Settlement Administrator in its discretion with input and assistance from Defense Counsel as needed. A dispute

may also be faxed or emailed to the Settlement Administrator as indicated in the Class Notice.

c. **Election Not to Participate in Settlement.** Class Members who wish to exclude themselves from the Settlement may do so by mailing a valid Election Not to Participate in Settlement to the Settlement Administrator by the Response Deadline. To be valid and effective, an Election Not to Participate in Settlement must be complete, signed by the Class Member, postmarked by the Response Deadline, and otherwise submitted in compliance with the instructions in the Class Notice, however an Election Not to Participate in Settlement shall not be per se invalid simply because it does not contain all of the information requested. An Election Not to Participate may also be faxed or emailed to the Settlement Administrator as indicated in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. Each Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment, except that each Aggrieved Employee will still be paid his or her allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether the Aggrieved Employee is a Non-Participating Class Member. Notwithstanding any other provision of this Agreement, Defendant is free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense that Defendant may assert against such a claim. Every Class Member who does not submit a valid Election Not to Participate in Settlement in the manner specified in this section will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the release of the Released Class Claims. Non-Participating Class Members shall not be permitted or entitled to submit objections to the Settlement or appear at the Final Approval Hearing.

d. **Report.** Not later than ten (10) calendar days after the Response Deadline, the Settlement Administrator will provide Class Counsel and Defense Counsel with a complete and accurate list of all Non-Participating Class Members.

4. **Right to Terminate Settlement.** If the number of Non-Participating Class Members exceeds five percent (5%) of the Class, Defendant, in its sole discretion, shall have the right but not the obligation to terminate the Settlement and rescind this Agreement. Defendant shall exercise its revocation rights, if at all, within twenty one (21) days of the Response Deadline, as extended for Class Notice remailings, by providing written

notice of revocation to Class Counsel. If Defendant exercises its revocation rights, the Parties will have no further obligations under the Settlement, and Defendant shall have no obligation to pay any portion of the Maximum Gross Settlement Amount or any other amount under this Agreement.

5. **No Solicitation.** The Parties, Class Counsel and Defense Counsel shall not encourage any Class Member to opt out of the Settlement, object to the Settlement, or appeal from the Judgment. Class Counsel shall not initiate any contact or other communications with Class Members, but may respond to inquiries received from Class Members. Additionally, to the extent any Class Members are current employees of Defendant, Defendant shall be free to communicate with those individuals regarding their employment duties in the ordinary course of business.
6. **Additional Briefing and Final Approval.**
 - a. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments no later than the date Plaintiffs file the motion for final approval, with such motion scheduled to be heard by the Court at the Final Approval Hearing.
 - b. Not later than sixteen (16) court days before the Final Approval Hearing, Plaintiffs will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administration Expenses.
 - c. If any opposition is filed to the motion for final approval and/or the motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Payment, then not later than five (5) court days before the Final Approval Hearing, Plaintiffs and/or Defendant may file a reply in support of the motion for final approval, and Plaintiffs and Class Counsel may also file a reply in support of their motion for the Class Representative Service Payment, the Class Counsel Fees Payments, and the Class Counsel Litigation Expenses Payment.
 - d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court, including whether the proposed Settlement should proceed. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the PAGA Payment, Class Representative Service Payments, the Class Counsel Fees

Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this section.

- e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-judgment matters as may be appropriate under court rules or applicable law.

- 7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiffs and Participating Class Members who did not timely submit an objection to the Settlement, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.
- 8. **Vacation, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then the Parties shall work together in good faith to address any concerns raised by the reviewing court, including whether the proposed Settlement should proceed. The vacation, reversal, or modification of the Court's award of the Class Representative Service Payments or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this section, provided that Defendant's obligation to make payments under this Settlement will remain limited to the Maximum Gross Settlement Amount.
- 9. **Timing of Settlement Funding and Provision of Individual Settlement Payments and Other Payments.** Defendant shall fund the Settlement by depositing the Maximum Gross Settlement Amount into the QSF

established by the Settlement Administrator. The QSF will be established and controlled by the Settlement Administrator after the Court grants final approval of the Settlement, subject to the terms of this Agreement and the Court's orders. Interest, if any, earned on the QSF shall be donated to the *Cy Pres* Recipients as set forth below. Defendant shall deposit the Maximum Gross Settlement Amount into the QSF no later than fifteen (15) days after the Effective Date. For purposes of clarity, if the Effective Date does not or cannot occur, Defendant will not be obligated to fund the Settlement.

10. **Uncashed Individual Settlement Payment and PAGA Payment Checks.** Within thirty (30) days from the funding of the Settlement, the Settlement Administrator will print and mail the Individual Settlement Payments to Participating Class Members and the employees' shares of the PAGA Payment to Aggrieved Employees, along with required tax reporting forms. A Participating Class Member or Aggrieved Employee must cash his or her Individual Settlement Payment and/or PAGA Payment check within 180 days of mailing of the checks. If a check is returned as undeliverable to the Settlement Administrator within 120 days of the original mailing, the Settlement Administrator will make a reasonable but not excessive effort to resend the check to the Participating Class Member and/or Aggrieved Employee at a corrected address. All Individual Settlement Payment and/or PAGA Payment checks that have not been cashed or negotiated by the 180-day deadline shall be deemed stale and voided by the Settlement Administrator.
11. **Individual Settlement Payments to Collective Members.** The Settlement Administrator shall ensure that each check sent to a Collective Member contains, on the back of the check, a limited endorsement stating that by endorsing, negotiating and/or cashing the check, the Collective Member is affirmatively consenting to opt into the lawsuit pursuant to 29 U.S. Code Section 216(b) for the purpose of becoming a party and releasing all claims against the Released Parties under the FLSA that arise out of or relate to the Released Class Claims during the Collective Period.
12. ***Cy Pres* Recipients.** The funds from all voided Individual Settlement Payment checks and/or PAGA Payment checks, as well as all interest from the QSF and all other unclaimed amounts from the Maximum Gross Settlement Amount will be paid *cy pres* to two recognized 501(c)(3) tax-exempt charities as follows: (1) 50% to Bet Tzedek Legal Services and (2) and 50% to Legal Aid at Work (the "*Cy Pres* Recipients"). Such *cy pres* payments will be made in compliance with Code of Civil Procedure section 384. Pursuant to Code of Civil Procedure section 382.2, counsel for the Parties will submit declarations in conjunction with the Motion for Preliminary Approval affirming that they have no relationship with or connection to the *Cy Pres* Recipients that could create an appearance of impropriety.

13. **Final Report by Settlement Administrator to Court.** Within ten (10) days from disbursement of the Maximum Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration containing a final report on the disbursement of all funds from the Maximum Gross Settlement Amount.

F. Release of Claims.

1. **Participating Class Members.** Upon full funding of the Maximum Gross Settlement Amount by Defendant, the Participating Class Members, including but not limited to Participating Collective Members, shall expressly and irrevocably release, acquit, and forever discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys' fees, damages, liquidated damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, against the Released Parties that accrued during the Class Period for Class Members, and that arise out of or relate to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in the First Amended Complaint based on the allegations in the First Amended Complaint, whether in contract or based on putative violations of any federal, state, city, or local law (the "Released Class Claims"). The Released Class Claims include all claims arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages, overtime, double time, or premium pay of any other kind, meal period violations, rest break violations, wage statement violations, the failure to keep accurate payroll records, suitable seating violations, the failure to timely pay wages during employment and upon termination of employment, the failure to reimburse employees for business expenses, all related claims for civil and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, all claims under PAGA that could have been premised on the Released Class Claims, all claims under the California Business & Professions Code section 17200 *et seq.* that could have been premised on the Released Class Claims, all claims under the Fair Labor Standards Act, the California Labor Code, the applicable IWC Wage Orders, and any other federal, state, city, or local law regarding wages and hours, including any and all claims arising from the factual allegations in the First Amended Complaint that the Class Members and Participating Collective Members do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties. The Released Class Claims exclude all other claims, including claims for vested benefits other than wages, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period, and PAGA claims outside of the PAGA Period.

2. **Participating Collective Members.** Upon full funding of the Maximum Gross Settlement Amount by Defendant, the Participating Collective Members shall expressly and irrevocably release, acquit, and forever discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys' fees, damages, liquidated damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, against the Released Parties that accrued during the Collective Period, and that arise out of or relate to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in the First Amended Complaint based on the allegations in the First Amended Complaint, whether in contract or based on putative violations of the Fair Labor Standards Act or its interpreting regulations (the "Released FLSA Claims"). The Released FLSA Claims include all claims arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages, overtime, or premium pay of any other kind, the failure to keep accurate payroll records, the failure to timely pay wages during employment and upon termination of employment, and all related claims for civil and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, including any and all claims arising from the factual allegations in the First Amended Complaint. that the Participating Collective Members do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties. The settlement check to the Participating Collective Members shall contain, on the back of the check, the following language: "By endorsing, negotiating, or cashing this check, I affirmatively consent to join and opt into the *Armstrong, et al. v. Prometric, LLC* lawsuit pursuant to 29 U.S. Code Section 216(b) for the purpose of becoming a party and releasing all claims against the Released Parties under the Fair Labor Standards Act that arise out of or relate to the Released Class Claims during the Collective Period."
3. **Aggrieved Employees.** Upon full funding of the Maximum Gross Settlement Amount by Defendant, the Aggrieved Employees, on their own behalf, on behalf of their heirs, assigns and estates, and in their representative capacities on behalf of the State of California, shall release any and all claims under the PAGA that were asserted or alleged in Plaintiffs' letters to the LWDA and the First Amended Complaint or that reasonably relate to factual allegations in Plaintiffs' letters to the LWDA or the First Amended Complaint, including all claims for penalties, interest, attorneys' fees, costs and expenses, and other remedies available under PAGA (the "Released PAGA Claims"). The release and extinguishment of the Released PAGA Claims shall be effective and binding on all Aggrieved Employees, including Aggrieved Employees who are Non-Participating Class Members.

4. **Plaintiffs.** Upon full funding of the Maximum Gross Settlement Amount by Defendant, in addition to the waiver and release of Released Class Claims, Released FLSA Claims and Released PAGA Claims, as set forth above, and in consideration for the Class Representative Service Payments, Plaintiffs, on behalf of themselves and on behalf of each of their heirs, executors, administrators, successors and assigns, voluntarily release and forever discharge the Released Parties of and from any actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, judgments, obligations, union grievances, claims, charges, complaints, appeals and demands whatsoever, in law or equity, which they may have against Released Parties, from the beginning of time through July 3, 2021, whether known or unknown, asserted or unasserted, including, but not limited to, any alleged violation of: Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*; the Civil Rights Act of 1991, Pub. L. No. 102-166, Sections 1981 through 1988 of Title 42 of the United States Code, 42 U.S.C. §§ 1981-1988; the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.*; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*; the Immigration Reform and Control Act, as amended; the Workers Adjustment Retraining Notification Act, as amended; the Family and Medical Leave Act; the California Fair Employment and Housing Act; the California Family Rights Act; the California Labor Code; the California Industrial Wage Commission Wage Orders, any other federal, state, city, or local human rights, civil rights, wage and hour, wage payment, pension, employee benefits, labor or other laws, rules, regulations and/or guidelines, constitutions or ordinances; any contract (whether oral or written, express or implied) or tort laws; any claim arising under the common law; any other claim for unpaid wages, employment discrimination, retaliation, wrongful termination, constructive discharge, pain and suffering, mental anguish, intentional and/or negligent infliction of emotional distress; any claim for costs, fees, or other expenses, including attorneys' fees or any other action against Released Parties, based upon any conduct occurring up to and including July 3, 2021 (the "Plaintiffs' Released Claims").

Plaintiffs acknowledge that they may discover facts or law different from, or in addition to the facts or law that they know or believe to be true with respect to the Released Class Claims, Released FLSA Claims, Released PAGA Claims, and the Plaintiffs' Released Claims. Plaintiffs agree, nonetheless, that this Agreement and the releases contained in it shall be binding and remain effective in all respects, notwithstanding such different or additional facts or law, or the discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, fraud or duress, and that the releases in this Agreement are full and complete releases, and that they intend that the releases in this Agreement to be final, binding and complete in all respects.

5. **Plaintiffs' Waiver of Rights under California Civil Code Section 1542.** Each Plaintiff acknowledges that he or she has read Section 1542 of the Civil Code of the State of California, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each Plaintiff understands that Section 1542 gives him or her the right not to release existing claims of which each Plaintiff is not now aware, unless each Plaintiff voluntarily chooses to waive this right. **Even though each Plaintiff is aware of this right, each Plaintiff nevertheless hereby voluntarily waives the right described in Section 1542 and any other statutes of similar effect, and elects to assume all risks for claims that now exist in each Plaintiff's favor, *whether known or unknown*, arising from the subject matter of the releases in this Agreement.** Each Plaintiff acknowledges that different or additional facts or legal claims may be discovered in addition to what Plaintiff now knows or believes to be true with respect to the Released Class Claims, Released FLSA Claims, Released PAGA Claim, and Plaintiffs' Released Claims extinguished by this Agreement, and each Plaintiff agrees that this Agreement will be and remain in effect in all respects as a complete and final release of such released claims, notwithstanding any such different or additional facts or legal claims.

6. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to expenses, costs or attorneys' fees against Defendant arising from or related to the Action.
- G. No Effect on Other Benefits.** The Individual Settlement Payments will not result in any additional benefit payments (such as 401(k) contributions or incentive compensation) beyond those provided by this Agreement to Plaintiffs or Participating Class Members, Participating Collective Members, or Aggrieved Employees, and all Plaintiffs, Participating Class Members, Participating Collective Members, and Aggrieved Employees will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- H. Limitation on Public Statements about Settlement.** At no time before or after Plaintiffs file their Motion for Preliminary Approval shall the Parties, Class Counsel, or Defense Counsel (i) hold any press conference or issue any press release or public statement, including without limitation via the Internet, social media or other communication channels, with respect to the Action or the Settlement (except as necessary to comply with legal reporting requirements, such

as Securities and Exchange Commission filings, reports or disclosures); (ii) characterize the Action or Settlement in a manner that disparages any party, their counsel, or the Released Parties; or (iii) otherwise publicize the Action or the Settlement, provided that Class Counsel may refer to the Settlement in adequacy of counsel declarations and may post publicly available documents on their website. If the Parties, Class Counsel, or Defense Counsel are contacted by the media or third parties regarding the Settlement, they shall not comment in any way, except to point to publicly available filings, which Class Counsel may post on Class Counsel's website.

I. Collateral Attack. Plaintiffs agree to participate in, and Class Counsel agree to join Defendant in, defending the Settlement and its approval from any collateral attack in the three (3) year period after the Effective Date by providing a declaration or declarations in support of the Settlement. The Parties and their counsel shall enter into a common interest agreement for the purpose of sharing information necessary to the defense of the Settlement.

J. Miscellaneous Terms.

1. No Admission of Liability or Class Certification for Other Purposes.

- a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiffs that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiffs and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be constructed as an admission by Defendant of any liability or wrongdoing as to Plaintiffs, Class Members, or any other person, and Defendant and the Released Parties specifically disclaim any such liability or wrongdoing. The Settlement and this Agreement are not, and it should not be construed as, an admission of fact or law in the Action or any other proceeding or matter. The Parties have entered into this Settlement with the intention of avoiding further disputes and litigation.
- b. Whether or not the Judgment becomes final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as,

offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiffs or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement, enforcing any and all terms of the Agreement, or for purposes of establishing the release and bar of, or defending against, the Released Class Claims, the Released FLSA Claims, the Released PAGA Claims, or the Plaintiffs' Released Claims.

2. **Integrated Agreement.** This Agreement replaces and supersedes the Memorandum of Understanding signed by the Parties on or about April 2, 2021, and any other agreements, understandings, or representations between the Parties regarding the Settlement, the Action, or any other matter relating or arising out of this Agreement. After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to its subject matter, and no oral or written representation, warranty, covenant, or inducement will be binding on any Party to this Agreement, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
3. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.
4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **No Tax Advice:** Neither Class Counsel nor Defense Counsel intend anything contained in this Settlement to constitute advice regarding taxes

or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

6. **Modification of Agreement.** Except as set forth in section III(J)(3) above, this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after Defendant fully funds the Maximum Gross Settlement Amount, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.
12. **Headings.** The descriptive heading of any section of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiffs and the Class:

Norman B. Blumenthal

Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

Teresa H. Michaud
BAKER & MCKENZIE LLP
1901 Avenue of the Stars, Suite 950
Los Angeles, California 90067
Telephone: (310) 201-4728
Facsimile: (310) 201-4721
E-Mail: Teresa.michaud@bakermckenzie.com

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement, the Action shall be stayed, except to effectuate the terms of this Agreement.
16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under Code of Civil Procedure section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement, and that the time within which to bring this Action to trial under Code of Civil Procedure Section 583.310 shall be extended from the date of the signing of this Agreement by all Parties until the entry of the final approval order and Judgment, or if not entered the date this Agreement shall no longer be of any force or effect.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: _____

Plaintiff Sarah Armstrong

Dated: Dec 8, 2021

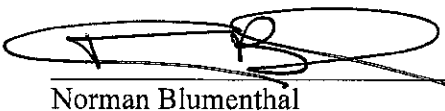

Robert Wallace (Dec 8, 2021 10:46 PST)

Plaintiff Robert Wallace

Dated: _____

[name]
For Defendant Prometric, LLC

Dated: 12/8/21


Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

APPROVED AS TO FORM AND CONTENT:

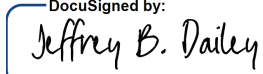
Dated: _____

Teresa H. Michaud
BAKER & MCKENZIE LLP
Attorney for Defendant

Dated: _____

Plaintiff Robert Wallace

Dated: 12/9/2021

DocuSigned by:

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Jeffrey B. Dailey [name]
For Defendant Prometric, LLC

Dated: _____

Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

APPROVED AS TO FORM AND CONTENT:

Dated: 12/9/2021

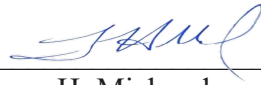

Teresa H. Michaud
BAKER & MCKENZIE LLP
Attorney for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

**NOTICE OF PROPOSED SETTLEMENT OF PAGA, CLASS AND COLLECTIVE
ACTION AND HEARING DATE FOR FINAL COURT APPROVAL**

**(Armstrong, et al. v. Prometric LLC, Superior Court of the State of California,
County of Los Angeles, Case No. 20STCV29967)**

**If you worked for Prometric in California as a non-exempt employee between August 7,
2016 and July 3, 2021, you may be entitled to a payment from a settlement.**

**YOUR LEGAL RIGHTS MAY BE AFFECTED BY THIS SETTLEMENT, AND YOU
HAVE A CHOICE TO MAKE. PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING NOW, RECEIVE AND CASH A SETTLEMENT CHECK	If you do nothing, you will remain a part of this case and will be sent a settlement payment of approximately \$<<[REDACTED]>>. The actual amount you receive will be less because of deductions for applicable taxes and due to other factors. If you do not exclude yourself from the Settlement, you will release the Released Class Claims defined in Section 5 below. Collective Members who sign or cash the settlement check also will release the Released FLSA Claims defined in Section 5 below. Aggrieved Employees also will released the Released PAGA Claims defined in Section 5 as part of this Settlement. If the Court approves the Settlement, the settlement check will be mailed to the same address as this notice. It is therefore important that you immediately notify the Settlement Administrator if your address has changed by following the instructions in Section 10 below.
EXCLUDE YOURSELF	If you do not want to participate in the Settlement and instead wish to retain your right to sue Prometric for wage and hour claims under California law, you must submit a written “Election Not to Participate in Settlement” to the Settlement Administrator by following the instructions in Section 7 below. If you elect not to participate in the Settlement, you will not receive any money from the Settlement, you will not be eligible to object to the Settlement, and you will not be bound by the Settlement or the releases. If you are an Aggrieved Employee as defined in Section 1 below, you will receive a PAGA Payment and you will release the Released PAGA Claims even if you exclude yourself from the Settlement.
OBJECT	You may write to the Settlement Administrator about why you object to Settlement or you may appear at the Final Approval Hearing to make an oral objection. If you submit an Election Not to Participate in Settlement, you cannot object to the Settlement. More information about objecting is provided in Section 8 below.

Your options are explained in this Notice. To exclude yourself from or object to the Settlement, you must take action **by the deadlines listed below**. If you are in favor of the Settlement, you

don't need to do anything to obtain your settlement payment. Prometric will not retaliate against you for any actions you take with respect to the Settlement.

1. Why did I get this Notice?

Plaintiffs Sarah Armstrong and Robert Wallace ("Plaintiffs") and Defendant Prometric LLC ("Defendant") have reached a proposed settlement (the "Settlement") of a class, collective, and PAGA lawsuit pending in Los Angeles County Superior Court (the "Court"). The Court authorized the parties to send this Notice to you to inform you about the proposed terms of the Settlement and about all of your options, before the Court decides whether to approve the Settlement.

Defendant's records show you were employed by Defendant in California as a non-exempt employee at some time between August 7, 2016 and July 3, 2021 (the "Class Period") and you have not already released Defendant from wage and hour claims for the Class Period in another matter. You are therefore a member of the Class.

If you worked for Defendant in California as a non-exempt employee at some time between August 7, 2017 and July 3, 2021 (the "Collective Period"), you are also a Collective Member. If you were employed by Defendant in California as a non-exempt employee at some time between June 3, 2019 and July 3, 2021 (the "PAGA Period"), you are also an "Aggrieved Employee."

This Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this lawsuit about?

This lawsuit is about whether Defendant properly paid its California non-exempt employees for minimum wages and overtime, provided meal periods and rest breaks, reimbursed employees for business expenses, provided accurate wage statements, and timely paid wages owed during employment and upon separation. Defendant denies the claims made in the lawsuit and believes that its California non-exempt employees received all wages, payments, breaks, and wage statements to which they were entitled. The Court has not made any ruling on the merits of the claims, and no party has prevailed in the lawsuit.

This lawsuit has been filed as a class action. In a class action, one or more people called "class representatives" sue not only for themselves, but also on behalf of other people who have similar claims. The other people are called "class members" and together are the "Class." Similarly, in a collective action, one or more people can seek to represent a "Collective" of similarly situated people. The individuals who initiated this class/collective action are called the "Plaintiffs." In a class/collective action, the Plaintiffs ask the court to resolve the issues for every member of the Class and Collective. Here, the Court has approved Plaintiffs as the Class Representatives, and the Class/Collective Members are represented by Class Counsel, the law firm Blumenthal Nordrehaug Bhowmik De Blouw LLP.

On August 7, 2020, Plaintiffs filed a class action complaint in the Superior Court of the State of California, County of Los Angeles (the "Complaint"), alleging the following claims against Defendant: unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods, failure to provide required rest periods, failure to timely

pay wages, failure to provide expense reimbursement, failure to provide accurate itemized wage statements, and failure to pay wages at termination. As part of this Settlement, Plaintiff is filing a First Amended Complaint to assert factual predicates and causes of action on behalf of a collective of similarly situated people for alleged violations of the minimum wage, overtime and recordkeeping provisions of the Fair Labor Standards Act (“FLSA”), and a claim under the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) (“PAGA”) with respect to the Aggrieved Employees based upon the above alleged violations. This lawsuit is referred to as the “Action.”

3. What are the terms of the Settlement?

Subject to Court approval, Defendant has agreed to pay up to Eight Hundred Eighty Thousand Dollars (\$880,000) (the “Maximum Gross Settlement Amount”) to resolve the claims of all Participating Class Members, Collective Members, and Aggrieved Employees. The Maximum Gross Settlement Amount will be used to pay: (1) the Individual Settlement Payments to Class/Collective Members; (2) attorneys’ fees of up to \$293,333 (one-third of the Maximum Gross Settlement Amount) plus reimbursement of actual litigation expenses and costs of up to \$25,000; (3) Class Representative Service Payments of \$10,000 for each Plaintiff (for a total of \$20,000); (4) a PAGA Payment of \$30,000, of which \$22,500.00 will be paid to the California Labor & Workforce Development Agency and \$7,500 will be paid to the Aggrieved Employees; and (5) the Settlement Administrator’s fees and costs of up to \$15,000. The Settlement is conditioned upon the Court granting final approval of the Settlement and entering an order and judgment.

4. How much will my settlement payment be and how was it calculated?

Calculation of Individual Settlement Payments. The Court has approved the formula used to calculate your settlement payment. The formula considers the number of days you worked (“Workdays”) as a non-exempt employee in California during the Class Period. The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement at www.XXXX.com.

Defendant’s records reflect that you worked << [REDACTED] >> Workdays during the Class Period. Based on the formula preliminary approved by the Court, your settlement payment is estimated to be << [REDACTED] >>.

The Settlement Administrator used information from Defendant’s records to calculate your payment. If you have questions about your calculation, you may contact the Settlement Administrator using the contact information in Section 10 below. If you dispute the number of Workdays and/or the calculation of your settlement payment, you must submit a written, signed dispute challenging the information, along with any documentation supporting your contention, to the Settlement Administrator no later than [45 days after the mailing of the Notice or 60 days after the original mailing date in the case of re-mailing]. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

Calculation of PAGA Payments. To settle the PAGA Released Claims, \$30,000 of the Maximum Gross Settlement Amount will be distributed according to PAGA’s requirements: 75% (\$22,500) will be paid to the California Labor & Workforce Development Agency and 25% (\$7,500) be paid to the Aggrieved Employees (together, the “PAGA Payment”). If you are an Aggrieved

Employee, your share of the PAGA Payment is determined by a formula that considers the total Workdays worked by Aggrieved Employees during the PAGA Period and your individual Workday count during that same period. Your PAGA Payment is in addition to any Individual Settlement Payment you receive as a Participating Class Member. The PAGA Payment shall be allocated and paid to Aggrieved Employees regardless of whether they request exclusion from the Settlement.

Settlement checks that are not cashed within 180 days of issuance will be null and void.

Tax Matters. Twenty-five percent (25%) of each Participating Class Member's Individual Settlement Payment shall be allocated to the settlement of wage claims (the "Wage Portion") and the remaining seventy-five percent (75%) will be allocated to interest and penalties (the "Non-Wage Portion"). The PAGA Payment (if any) is allocated entirely to penalties.

The Wage Portion of each Individual Settlement Payment is subject to payroll deductions or applicable taxes and withholdings, for which you will receive a Form W-2. The Non-Wage Portion and PAGA Payment (if any) are not subject to deductions and will be reported on a Form 1099. Neither Class Counsel nor Defense Counsel can advise you regarding the tax consequences of the Settlement. You may wish to consult with your own tax advisor about the tax consequences of the Settlement.

5. What am I giving up by participating in the Settlement?

Regardless of whether you cash a settlement check, if you do not exclude yourself from the Settlement (as described in Section 7 below), you will release the Released Class Claims.

This means that you cannot sue, continue to sue, or be part of any other legal action against Defendant (Prometric) and its current or past predecessors, successors, affiliates, subsidiaries, parent companies, divisions, current and past employees, insurers, agents, consultants, legal representatives, and any other related entities, and all of their past, present and future officers, shareholders, owners, members, directors, partners, agents, managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest, and underwriters (the "Released Parties") asserting any claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys' fees, damages, liquidated damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, against the Released Parties that accrued during the Class Period for Class Members, and that arise out of or relate to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in the First Amended Complaint based on the allegations in the First Amended Complaint, whether in contract or based on putative violations of any federal, state, city, or local law (the "Released Class Claims"). The Released Class Claims include all claims arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages, overtime, double time, or premium pay of any other kind, meal period violations, rest break violations, wage statement violations, the failure to keep accurate payroll records, suitable seating violations, the failure to timely pay wages during employment and upon termination of employment, the failure to reimburse employees for business expenses, all related claims for civil and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, all claims under PAGA that could have been premised on the Released Class Claims, all claims under the California Business & Professions Code section 17200 *et seq.* that could have been premised on the Released Class Claims, all claims under the Fair Labor Standards Act, the California Labor Code, the applicable

IWC Wage Orders, and any other federal, state, city, or local law regarding wages and hours, including any and all claims arising from the factual allegations in the First Amended Complaint that the Class Members do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties. The Released Class Claims exclude all other claims, including claims for vested benefits other than wages, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period, and PAGA claims outside of the PAGA Period.

This means that, if you do not timely exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and any of the Released Parties about the Released Class Claims. It also means that all of the Court's orders in the Action will apply to you and legally bind you.

If you are a Collective Member and you cash your settlement check, you also will release the Released FLSA Claims. Collective Members who cash their settlement checks will not be able to sue, continue to sue, or be part of any other legal action asserting any claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys' fees, damages, liquidated damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, against the Released Parties that accrued during the Collective Period, and that arise out of or relate to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in the First Amended Complaint based on the allegations in the First Amended Complaint, whether in contract or based on putative violations of the Fair Labor Standards Act or its interpreting regulations (the "Released FLSA Claims"). The Released FLSA Claims include all claims arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages, overtime, or premium pay of any other kind, the failure to keep accurate payroll records, the failure to timely pay wages during employment and upon termination of employment, and all related claims for civil and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, including any and all claims arising from the factual allegations in the First Amended Complaint that the Participating Collective Members do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties. The settlement check to the Participating Collective Members shall contain, on the back of the check, the following language: "By endorsing, negotiating, or cashing this check, I affirmatively consent to join and opt into the *Armstrong, et al. v. Prometric, LLC* lawsuit pursuant to 29 U.S. Code Section 216(b) for the purpose of becoming a party and releasing all claims against the Released Parties under the Fair Labor Standards Act that arise out of or relate to the Released Class Claims during the Collective Period."

The PAGA Released Claims will be released. If you are an Aggrieved Employee, you also will release any and all claims under the Labor Code Private Attorneys General Act of 2004 that were asserted or alleged in Plaintiffs' letters to the LWDA and the First Amended Complaint or that reasonably relate to factual allegations in Plaintiffs' letters to the LWDA or the First Amended Complaint, including all claims for penalties, interest, attorneys' fees, costs and expenses, and other remedies available under PAGA (the "Released PAGA Claims"). The release and extinguishment of the Released PAGA Claims is effective and binding on all Aggrieved Employees, including Aggrieved Employees who are Non-Participating Class Members.

6. How can I get my settlement payment?

If you wish to participate in the Settlement, you do not need to take any action now. You will receive a check for your settlement payment by mail to the same address as this Class Notice. If your mailing address has changed, please contact the Settlement Administrator.

The Court will hold a hearing on [REDACTED], at [REDACTED] to decide whether to give final approval to the Settlement. If the Court grants final approval and there are no objections or appeals, settlement payments will be mailed approximately two months after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient and update the Settlement Administrator if your address changes.

7. What if I don't want to be a part of the Settlement?

If you do not wish to release your Released Class Claims, then you must take steps to exclude yourself from the Settlement. This is sometimes referred to as “opting out” of the Settlement.

If you wish to exclude yourself from the Settlement, you must submit a written “Election Not to Participate in Settlement.” **If you exclude yourself, you will not receive an Individual Settlement Payment and you will not be bound by the Settlement terms, which means you will retain the right to sue Defendant for the Released Class Claims and Released FLSA Claims.** However, if you are an Aggrieved Employee, you will receive a PAGA Payment and you will release all Released PAGA Claims even if you exclude yourself from the Settlement. You should be aware that your claims are subject to a statute of limitations, which means that they will expire on a certain date.

To exclude yourself from the Settlement, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated Election Not to Participate in Settlement. The Election Not to Participate in Settlement must be postmarked by or received no later than [45 days after the mailing of the Notice or 60 days after the original mailing date in the case of re-mailing]. The Election Not to Participate in Settlement should state in substance that you wish to be excluded from the Class in the *Armstrong v. Prometric* lawsuit and that you understand that by excluding yourself you will not receive a settlement payment from the class settlement in this Action. You should include your full name, address, and telephone number on the Election Not to Participate in Settlement. Please also include the name and number of the case, which is *Armstrong v. Prometric*, Case No. 20STCV29967. You can only personally sign and submit a Election Not to Participate in Settlement for yourself. No other person may sign or submit an Election Not to Participate in Settlement on your behalf.

The Settlement Administrator's address and telephone number are:

[REDACTED]
[REDACTED]

Elections Not to Participate in Settlement that are postmarked after [45 days after the mailing of the Notice or 60 days after the original mailing date in the case of re-mailing], are incomplete, or are unsigned will be rejected, and Class Members who submit deficient Elections Not to Participate in Settlement will remain bound by the Settlement and the releases described above.

8. How do I tell the Court that I disapprove of the Settlement?

If you have not submitted an Election Not to Participate in Settlement, you can object to any portion the Settlement which you disapprove. You can give reasons why you think the Court should not approve the Settlement, including any of its proposed terms, the attorneys' fees and expenses, or the Class Representative Service Payments. You may object to the Settlement either in writing or in person.

All written objections must be submitted to the Settlement Administrator by [45 days after the mailing of the Notice or 60 days after the original mailing date in the case of re-mailing], and if mailed, must be postmarked or otherwise received by that date. The Settlement Administrator's address is : _____ You also may send written objections to the Settlement Administrator via email at _____, or by fax at _____. Written objections should explain the grounds for each objection and describe why you do not agree with the Settlement. Include your name, current address, and telephone number on your objections. Write the name and number of the lawsuit on all objections or other correspondence: *Armstrong v. Prometric, LLC*, Los Angeles Superior Court Case No. 20STCV29967.

Alternatively, you may appear remotely at the Final Approval Hearing on _____ at _____ to make an oral objection without submitting a written objection. The hearing will take place remotely. To appear at the hearing, you must schedule a remote appearance through LA CourtConnect at <https://www.lacourt.org/lacc/>. Check the Court's website for the most current information. Class Counsel can assist you if you would like to appear at the hearing.

You cannot object to the Settlement if you have excluded yourself from the Settlement. If the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will be mailed a settlement check.

The addresses for Parties' counsel are as follows:

Class Counsel:

Norman Blumenthal
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw
LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
Email: kyle@bamlawca.com
Website: www.bamlawca.com

Counsel for Defendant:

Robin Samuel
Teresa H. Michaud
BAKER & MCKENZIE LLP
1901 Avenue of the Stars, Suite 950
Los Angeles, California 90067
Tel: (310) 201-4728
Email: robin.samuel@bakermckenzie.com
Email: teresa.michaud@bakermckenzie.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, at the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, CA 90012, in Department 17 before Judge Maren E. Nelson. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate, and will consider

any properly submitted objections. The Court will determine whether to grant final approval to the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payments to Plaintiffs. This hearing may be rescheduled by the Court without further notice to you. If you are interested in participating the Final Approval Hearing, you should confirm the date, time and location by contacting Class Counsel. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing remotely using the LA CourtConnect procedure at <https://www.lacourt.org/lacc/>. If the hearing is continued, notice will be posted on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Armstrong v. Prometric*. In addition, hearing dates are posted on the Internet via the Case Access page for the California Superior Court for the County of Los Angeles (<http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>) and entering the Case No. 20STCV29967.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at [REDACTED] or write to *Armstrong v. Prometric, LLC* Settlement Administrator, c/o [REDACTED].

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service awards, the motion for final approval or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Armstrong v. Prometric*. You may also get more details by examining the Court's file on the Internet via the Case Access page for the California Superior Court for the County of Los Angeles and entering the Case No. 20STCV29967. If you wish to view the Court files in person, you must make an appointment with the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

The Court encourages persons seeking services from the Clerk's Office, court support services, and/or the Self-Help Centers to schedule an appointment. The telephone numbers to schedule appointments for each courthouse are listed at courthouse entrances and are posted on the Court's website, www.lacourt.org.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such event, the Settlement Administrator shall pay all unclaimed funds *cy pres* to two recognized 501(c)(3) tax-exempt charities as follows: (1) 50% to Bet Tzedek Legal Services and (2) and 50% to Legal Aid at Work, as approved by the Court pursuant to California Code of Civil Procedure section 384.
- If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SARAH ARMSTRONG and ROBERT
WALLACE, individuals and on behalf of
themselves and those similarly situated,

Plaintiffs,

v.

PROMETRIC LLC, a Limited Liability
Company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **20STCV29967**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Maren E. Nelson
Dept.: SS-17

Action Filed: August 7, 2020
Trial Date: Not set

PRELIMINARY APPROVAL ORDER

1 This matter, having come before the Honorable _____ of the Superior Court of
2 the State of California, in and for the County of Los Angeles, on _____[DATE], for the
3 motion by Plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) for preliminary approval
4 of the class settlement with Defendant Prometric LLC (“Defendants”). The Court, having
5 considered the briefs, argument of counsel and all matters presented to the Court and good cause
6 appearing, hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of Class Action
7 Settlement.

8
9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the First Amended Class Action Settlement
11 Agreement (“Agreement”) as revised and submitted as Exhibit #1 to the Supplemental Declaration
12 of Kyle Nordrehaug in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action
13 Settlement. The Court finds that the Settlement set forth in the Agreement appears fair, reasonable
14 and adequate, and within the range of possible approval, pursuant to the provisions of California
15 Code of Civil Procedure Section 382 and Rule 3.769 of the California Rules of Court.

16 2. This Order incorporates by reference the definitions in the Agreement, and all
17 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. The Maximum Gross Settlement Amount is Eight Hundred Eighty Thousand
19 Dollars (\$880,000). It appears to the Court on a preliminary basis that the settlement amount and
20 terms are fair, adequate and reasonable as to all potential Class Members when balanced against
21 the probable outcome of further litigation and the significant risks relating to certification, liability
22 and damages issues. It further appears that investigation and research have been conducted such
23 that counsel for the Parties are able to reasonably evaluate their respective positions. It further
24 appears to the Court that settlement at this time will avoid substantial additional costs by all
25 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of
26 the Action. It further appears that the Settlement has been reached as the result of serious and
27 non-collusive, arms-length negotiations. The Court therefore preliminarily finds that the

1 Settlement is fair, adequate, and reasonable when balanced against the probable outcome of
2 further litigation and the significant risks relating to certification, liability, and damages issues.

3 4. The Agreement provides that Class Counsel may seek attorneys' fees in an amount
4 not to exceed one-third of the Maximum Gross Settlement Amount, an award of litigation
5 expenses incurred, in an amount not to exceed \$25,000, and Class Representative Service
6 Payments for each Plaintiff in an amount not to exceed \$10,000, for a combined total of \$20,000.
7 The Court will not approve the amount of attorneys' fees and costs, nor the amount of any service
8 award, until the Final Approval Hearing. Plaintiffs will be required to present evidence supporting
9 these requests, including lodestar, prior to final approval.

10 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
11 certification of a class for settlement purposes only. This stipulation will not be deemed
12 admissible in this or any other proceeding should this Settlement not become final. The Court
13 finds that the prerequisites and considerations of Code of Civil Procedure Section 382 and Rule
14 3.769 of the California Rules of Court appear to be satisfied, and provisionally certifies, for
15 settlement purposes only, the class of all individuals employed by Defendant in California as non-
16 exempt employees at any time during the Class Period, but excluding individuals who released
17 Defendant from wage and hour claims for the Class Period, including those wage and hour claims
18 released as part of a general release of claims. The Class Period is August 7, 2016 to July 3, 2021.

19 6. The Court finds that, for settlement purposes only, the Class meets the
20 requirements for certification under section Code of Civil Procedure Section 382 in that: (a) the
21 Class is ascertainable and so numerous that joinder of all members of the Class is impracticable;
22 (b) common questions of law and fact predominate, and there is a well-defined community of
23 interest amongst the members of the Class with respect to the subject matter of the litigation; (c)
24 the claims of the Plaintiffs are typical of the claims of the members of the Class; (d) the Plaintiffs
25 can fairly and adequately protect the interests of the members of the Class; (e) a class action is
26 superior to other available methods for the efficient resolution of this controversy; and (f) counsel

1 for the Class is qualified to act as counsel for the Class and the Plaintiffs are adequate
2 representatives of the Class.

3 7. The Court finds that the prerequisites and considerations necessary for conditional
4 certification of a collective under 29 U.S.C. Section 216(b) of the Fair Labor Standards Act of
5 1938 are satisfied and conditionally certifies, for settlement purposes only, the collective of all
6 individuals employed by Defendant in California as non-exempt employees at any time during the
7 Class Period, but excluding individuals who released Defendant from wage and hour claims for
8 the Class Period, including those wage and hour claims released as part of a general release of
9 claims. The Collective Period is August 7, 2017 to July 3, 2021.

10 8. The Court finds that the prerequisites and considerations necessary for approval of
11 the settlement of the Released PAGA Claims asserted in the Action, including the settlement and
12 release of the Released PAGA Claims, and the payment of Thirty Thousand Dollars (\$30,000)
13 from the Maximum Gross Settlement Amount to resolve the Released PAGA Claims, appear to be
14 satisfied. The Aggrieved Employees will not have the opportunity to opt out of, or object to the
15 PAGA Payment and settlement and release of the Released PAGA Claims. Upon final approval
16 of the Settlement, the payment to the LWDA and the Aggrieved Employees shall be made in
17 accordance with the Agreement. The PAGA Period is June 3, 2019 to July 3, 2021.

18 9. For settlement purposes only, the Court provisionally appoints Plaintiffs as the
19 representatives of the Class. For settlement purposes only, the Court provisionally appoints
20 Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug
21 Bhowmik De Blouw LLP as Class Counsel for the Class.

22 10. The Court approves the proposed notice plan, including, as to form and content, the
23 revised Notice of Proposed Settlement of PAGA, Class and Collective Action and Hearing Date
24 for Final Court Approval (“Class Notice”), as revised and submitted as Exhibit A to the First
25 Amended Class Action Settlement Agreement. The Court finds that the Class Notice appears to
26 fully and accurately inform the Class of all material elements of the proposed Settlement, of the
27 Class Members’ right to be excluded from the Class by submitting a written opt-out request, and
28

1 of each member's right and opportunity to object to the Settlement. The Court further finds that
2 the distribution of the Class Notice substantially in the manner and form set forth in the
3 Agreement and this Order meets the requirements of due process, is the best notice practicable
4 under the circumstances, and shall constitute due and sufficient notice to all persons entitled
5 thereto. The Court orders the mailing of the Class Notice by first class mail in the manner set
6 forth in the Agreement. The Court has been advised that all Class Members speak and read
7 English with ease. If a Class Notice is returned because of an incorrect address, the Settlement
8 Administrator will promptly search for a more current address for the Class Member and re-mail
9 the Class Notice to the Class Member no later than seven (7) business days after the receipt of the
10 undelivered Class Notice.

11 11. The Court hereby appoints _____ as the Settlement Administrator.
12 No later than fourteen (14) calendar days after preliminary approval of the Settlement by the
13 Court, Defendant shall provide to the Settlement Administrator an electronic spreadsheet with the
14 Class Data. The Settlement Administrator will perform address updates and verifications as
15 necessary prior to the mailing of the Class Notice. Using best efforts to mail it as soon as possible,
16 and in no event later than 14 days after receiving the Class information spreadsheet, the Settlement
17 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail.

18 12. The Court hereby preliminarily approves the proposed procedure for exclusion
19 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
20 from the Class as provided in the Class Notice by following the instructions for requesting
21 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
22 postmarked by no later than the Response Deadline, which is forty-five (45) calendar days after
23 the date of the mailing of the Class Notice. If the Class Notice is re-mailed, the Response
24 Deadline will be extended an additional 15 days. An Election Not to Participate in Settlement
25 may also be faxed or emailed to the Settlement Administrator as indicated in the Class Notice.
26 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
27 any recovery under the Settlement and will not be bound by the Settlement or have any right to
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1 object, appeal or comment thereon. Class Members who have not requested exclusion shall be
2 bound by all determinations of the Court, the Agreement and the Judgment. Each request for
3 exclusion shall apply to only one individual, and any attempt to effect the exclusion or opt out of a
4 group, class, or subclass of individuals is not permitted and will be deemed invalid.

5 13. Any Class Member who has not opted out may appear at the Final Approval
6 Hearing, may object or express the Class Member's views regarding the Settlement, and may
7 present evidence and file briefs or other papers that may be proper and relevant to the issues to be
8 heard and determined by the Court as provided in the Class Notice. Class Members will have
9 until the Response Deadline to submit their written objections to the Settlement Administrator in
10 accordance with the instructions in the Class Notice. If the Class Notice is re-mailed, the
11 Response Deadline will be extended an additional 15 days. Written objections may also be faxed
12 or emailed to the Settlement Administrator as indicated in the Class Notice. Alternatively, Class
13 Members may appear at the Final Approval Hearing to make an oral objection.

14 14. A Final Approval Hearing shall be held before this Court on _____
15 _____ at _____ in Department 17 at the Spring Street Courthouse of the Los
16 Angeles County Superior Court to determine all necessary matters concerning the Settlement,
17 including: whether the proposed settlement of the Action on the terms and conditions provided for
18 in the Agreement is fair, adequate and reasonable and should be finally approved by the Court;
19 whether the Final Approval Order and Judgment should be entered herein; whether the plan of
20 allocation contained in the Agreement should be approved as fair, adequate and reasonable to the
21 Class Members; and whether the attorneys' fees and costs, the service awards, the expenses of the
22 Settlement Administrator, and the PAGA Payment should be approved. All papers in support of
23 the motion for final approval and the motion for attorneys' fees, costs and service awards shall be
24 filed with the Court and served on all counsel no later than sixteen (16) court days before the
25 hearing.

26 15. The Settlement, the Agreement and all exhibits, documents, or instruments related
27 to the Settlement or Agreement shall not be construed as a concession or admission by Defendant

1 in any way that the asserted claims have any merit or that this Action was properly brought as a
2 class or representative action. The Settlement, the Agreement and all exhibits, documents, or
3 instruments related to the Settlement or Agreement shall not be used as evidence of, or used
4 against Defendant as, an admission or indication in any way, including with respect to any claim
5 of any liability, wrongdoing, fault, or omission by Defendant or with respect to the truth of any
6 allegation asserted by any person. Whether or not the Settlement is finally approved, neither the
7 Settlement, the Agreement, nor any exhibit, document, statement, proceeding or conduct related to
8 the Settlement or Agreement, nor any reports or accounts thereof, shall in any event be construed
9 as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose
10 adverse to the Defendant, including, but not limited to, evidence of a presumption, concession,
11 indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession or
12 damage.

13 16. If the Settlement is not finally approved, or the Effective Date does not occur, or
14 the Settlement is terminated under its terms, then: (a) the Settlement shall be without force and
15 effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable;
16 (b) the Parties shall be deemed to have reverted *nunc pro tunc* to their respective status as of the
17 day immediately before the Parties entered into the Settlement Agreement, with the Parties to meet
18 and confer regarding any discovery or case management deadlines that were pending at the time;
19 (c) Defendant and/or the Released Parties shall not be obligated to pay any amount of the
20 Maximum Gross Settlement Amount and shall be refunded any amounts paid pursuant to the
21 Agreement but not yet spent or disbursed; (d) all Orders entered in connection with the Settlement,
22 including the certification of the Class, shall be vacated without prejudice to any Party's position
23 on the issue of class certification, or any other issue, in this Action or any other action, and the
24 Parties shall be restored to their litigation positions existing on the date of execution of the
25 Agreement; and (e) the Parties shall proceed in all respects as if the Agreement and related
26 documentation and orders had not been executed, and without prejudice in any way from the
27 negotiation or fact of the Settlement or the terms of the Agreement. In such an event, this Court's
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1 orders regarding the Settlement, including this Order, shall not be used or referred to in litigation,
2 or any arbitration or other civil or administrative proceeding, for any purpose. Nothing in the
3 foregoing paragraph is intended to alter the terms of the Agreement with respect to the effect of
4 the Settlement if it is not approved.

5 17. The Court reserves the right to adjourn or continue the date of the Final Approval
6 Hearing and all dates provided for in the Agreement without further notice to Class Members, and
7 retains jurisdiction to consider all further applications arising out of or connected with the
8 proposed Settlement.

9 18. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
10 further orders of the Court at the Final Approval Hearing.

11 **IT IS SO ORDERED.**

12
13 Dated: _____

HON. MAREN E. NELSON
JUDGE, SUPERIOR COURT OF CALIFORNIA

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SARAH ARMSTRONG and ROBERT
WALLACE, individuals and on behalf of
themselves and those similarly situated,

Plaintiffs,

v.

PROMETRIC LLC, a Limited Liability
Company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **20STCV29967**

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Maren E. Nelson
Dept.: SS-17

Action Filed: August 7, 2020
Trial Date: Not set

FINAL APPROVAL ORDER AND JUDGMENT

1 The motion of Plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) for an order
2 finally approving the First Amended Class Action Settlement Agreement (“Agreement”) with
3 Defendant Prometric LLC (“Defendant”), attorneys’ fees and costs, service payments, and the fees
4 and expenses of the Settlement Administrator duly came on for hearing on _____
5 before the Honorable _____.

6
7 **I.**

8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

11 1. This Order hereby adopts and incorporates by reference the definitions, terms and
12 conditions of the Agreement.

13 2. This Court has jurisdiction over the subject matter of this litigation pending before
14 the Superior Court for the State of California, County of Los Angeles, and over all Parties to this
15 litigation, including the Class.

16 3. For the reasons set forth in the Preliminary Approval Order, which are adopted and
17 incorporated herein by reference, this Court finds that the requirements of California Code of Civil
18 Procedure section 382 and rule 3.769 of the California Rules of Court have been satisfied.

19 4. Based on a review of the evidence submitted in support of the motion and the
20 applicable law, the Court finds that the Settlement on the terms set forth in the Agreement is fair,
21 reasonable, and adequate.

22 5. The Court further finds that the Settlement is the result of arm’s length negotiations
23 that were conducted after Class Counsel had adequately investigated and made themselves
24 familiar with the claims and defenses in this Action, including the strengths and weaknesses of
25 those claims and defenses. In particular, the amount the Settlement, the significant risks relating
26 to certification, liability, and damages issues, and the assistance of an experienced mediator in the
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1 settlement process, among other factors, support the Court’s conclusion that the Settlement is fair,
2 reasonable, and adequate.

3 **Preliminary Approval of the Settlement**

4 6. On _____, the Court granted preliminary approval of the Settlement
5 (“Preliminary Approval Order”). At this same time, the Court approved conditional certification
6 of the Class and the Collective Members for settlement purposes only.

7 **Notice to the Class**

8 7. In compliance with Rule 3.769(f) of the California Rules of Court and the
9 Preliminary Approval Order, on or about _____, the Settlement Administrator
10 delivered the Court-approved Class Notice to the Class by first class U.S. mail using each Class
11 Member’s last known mailing address. The Court finds that delivery of the Class Notice to the
12 Class in this manner was the best notice practicable under the circumstances, and was reasonably
13 calculated to communicate actual notice of the litigation and the proposed settlement to the Class.
14 The Class Notice: (i) fully and accurately informed the Class of all material elements of the
15 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
16 from the Settlement; (ii) constituted valid, due, and sufficient notice to all Class Members and
17 Collective Members; and (iii) fully satisfied and complied with the requirements of notice and due
18 process under California and federal statutory and constitutional law. The Class Notice fairly and
19 adequately described the Settlement and provided Class Members with sufficient information
20 about and notice of their rights and options with respect to the Settlement, provided an explanation
21 of the proposed settlement terms and procedures for Class Members to follow in filing written
22 objections to it and in arranging to appear at the Final Approval Hearing and state any objections
23 to the proposed Settlement, and included notice of a variety of means by which Class Members
24 could obtain additional information.

25 8. The Response Deadline for opting out of the Class or submitting written objections
26 to the Settlement was _____, which deadline was extended by 15 days for any Class
27 Member whose Class Notice was re-mailed to them. There was sufficient time between the
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1 mailing of the Class Notice and the Response Deadline to permit Class Members to decide
2 whether to opt out of, object to, or participate in the Settlement, and to act on their decision. A
3 full opportunity has been afforded to the Class Members to participate in this hearing, and all
4 Class Members and other persons wishing to be heard have been heard. Class Members also have
5 had a full and fair opportunity to exclude themselves from the proposed Settlement and Class.
6 Accordingly, the Court determines that all Class Members who did not timely and properly submit
7 an Election Not to Participate in Settlement are bound by the Settlement and this Final Approval
8 Order and Judgment.

9 **Fairness of Settlement**

10 9. The Court has considered all relevant factors for determining the fairness of the
11 Settlement and has concluded that all such factors weigh in favor of granting final approval. In
12 particular:

13 (a) The Agreement is entitled to a presumption of fairness. *Dunk v. Ford*
14 *Motor Co.* 48 Cal. App. 4th 1794, 1801 (1996).

15 (b) The settlement was reached through arm's-length bargaining between the
16 parties during an all-day mediation before David Rotman, a respected and experienced mediator of
17 wage and hour class actions. There has been no collusion between the parties in reaching the
18 proposed settlement.

19 (c) Plaintiffs' investigation and discovery have been sufficient to allow the
20 Court and counsel to act intelligently.

21 (d) Counsel for both parties are experienced in similar employment class action
22 litigation. All counsel recommended approval of the Agreement.

23 (e) The percentage of objectors and requests for exclusion is small. ____
24 objections were received. _____ requests for exclusion were received.

25 (f) The participation rate was high. _____ Class Members will be mailed a
26 settlement payment, representing _____ % of the overall Class.

1 10. The consideration to be given to the Class Members under the terms of the
2 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
3 and defenses asserted in this action and is fair, reasonable and adequate compensation for the
4 release of Class Members' claims, the Collective Members' claims, and the Aggrieved
5 Employees' claims, given the uncertainties and significant risks of the litigation and the delays
6 which would ensue from continued prosecution of the action.

7 11. Accordingly, the Court hereby approves the Settlement as set forth in the
8 Agreement and expressly finds that the Settlement is, in all respects, fair, reasonable, adequate,
9 and in the best interests of the Participating Class Members and Participating Collective Members,
10 and the Court hereby directs implementation of all remaining terms, conditions, and provisions of
11 the Agreement. The Court also finds that settlement now will avoid additional and potentially
12 substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the
13 case. Additionally, after considering the monetary recovery provided by the Settlement in light of
14 the challenges posed by continued litigation, the Court concludes that the Settlement provides the
15 Participating Class Members and Participating Collective Members with fair and adequate relief.

16 **Attorneys' Fees and Costs**

17 12. An award of \$_____ for attorneys' fees, representing [percentage] of the
18 Maximum Gross Settlement Amount, and \$_____ for litigation costs and expenses, is
19 reasonable, in light of the contingent nature of Class Counsel's fee, the hours worked by Class
20 Counsel, and the results achieved by Class Counsel. The requested award has been supported by
21 Class Counsel's lodestar calculations and billing statements.

22 **Class Representative Service Payment**

23 13. The Agreement provides for Class Representative Service Payments of not more
24 than \$10,000 to each of the Plaintiffs, for a combined total of \$20,000, subject to the Court's
25 approval. The Court finds that a Class Representative Service Payment in the amount of \$_____
26 _____ to each of the Plaintiffs is reasonable in light of the risks and burdens undertaken
27
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1 by the Plaintiffs in the litigation, for the time and effort in bringing and prosecuting this matter on
2 behalf of the Class, and for the execution of a general release of claims.

3 **Settlement Administration Expenses**

4 14. The Settlement Administrator shall calculate and administer the payments to be
5 made to the Class Members and Collective Members, transmit payment for attorneys' fees and
6 costs to Class Counsel, transmit the Class Representative Service Payments to the Plaintiffs,
7 distribute the PAGA Payment, issue any required tax reporting forms, calculate withholdings and
8 perform the other remaining duties set forth in the Agreement. The Settlement Administrator has
9 documented \$ _____ in fees and expenses, and this amount is reasonable in light of the work
10 performed by the Settlement Administrator.

11 **PAGA Payment**

12 15. The Agreement provides for a PAGA Payment out of the Maximum Gross
13 Settlement Amount of \$30,000, of which \$22,500 shall be allocated to the California Labor &
14 Workforce Development Agency ("LWDA") for the LWDA's 75% share of the settlement of civil
15 penalties paid pursuant to the PAGA and \$7,500 shall be allocated and distributed to the
16 Aggrieved Employees based on their respective Workdays during the PAGA Period. The Court
17 finds this PAGA Payment to be reasonable. All Aggrieved Employees will be sent their share of
18 the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth
19 below, whether or not they opt out of the Settlement. The LWDA was provided notice of the
20 Settlement and a copy of the Agreement and its settlement terms, and has not objected to the
21 proposed Settlement. The Court approves the settlement and release of the PAGA claims for the
22 PAGA Payment.

23
24 **II.**

25 **ORDERS**

26 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:
27
28

1 1. The Class and Collective are certified for purposes of settlement. The Class is
2 defined as follows:

3 All individuals employed by Defendant in California as non-exempt employees at
4 any time during the Class Period of August 7, 2016 to July 3, 2021, but excluding
5 individuals who released Defendant from wage and hour claims for the Class
6 Period, including those wage and hour claims released as part of a general release
7 of claims.

8 The “Collective Members” are defined as:

9 All individuals employed by Defendant in California as non-exempt employees at
10 any time during the Collective Period of August 7, 2017 to July 3, 2021, but
11 excluding individuals who released Defendant from FLSA claims for the Collective
12 Period, including those wage and hour claims released as part of a general release
13 of claims.

14 2. All persons who meet the foregoing Class definition are members of the Class,
15 except for the following individuals who submitted a valid and timely Election Not to Participate
16 in Settlement: [INSERT NAMES OF OPT OUTS].

17 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
18 best interest of the Class and the Collective Members.

19 4. Class Counsel are awarded attorneys’ fees in the amount of \$_____ and
20 costs in the amount of \$_____. Class Counsel shall not seek or obtain any other
21 compensation or reimbursement from Defendant, Plaintiffs or members of the Class.

22 5. The payment of the Class Representative Service Payments in the amount of \$
23 _____ to each of the Plaintiffs is approved.

24 6. The payment of \$_____ to the Settlement Administrator for its fees and
25 expenses is approved.

26 7. The PAGA Payment of \$30,000 is approved and shall be allocated in accordance
27 with the Agreement.

28 8. The Agreement and this Settlement are not an admission by Defendant, and this
Final Approval Order and Judgment is not a finding, of the validity of any claims asserted in the
Action, of any wrongdoing by Defendant, or that any of the claims asserted in this Action are

1 appropriate for class treatment, other than for settlement purposes. Neither this Final Approval
2 Order and Judgment, the Agreement, nor any document referred to herein, nor any action taken to
3 carry out the Agreement is, may be construed as, or may be used as an admission by or against
4 Defendant of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of
5 the Agreement, and any negotiations or proceedings related thereto, shall not in any event be
6 construed as, or deemed to be evidence of, an admission or concession with regard to the denials
7 or defenses by Defendant. Notwithstanding these restrictions, Defendant may file in the Action or
8 in any other proceeding this Final Approval Order and Judgment, the Agreement, or any other
9 papers and records on file in the Action as evidence of the Settlement to support a defense of res
10 judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense
11 as to the Released Class Claims.

12 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
13 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
14 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
15 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
16 to individual Class Members.

17 10. If the Agreement does not become final and effective in accordance with the terms
18 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
19 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
20 revert to their respective positions as of before entering into the Agreement, and expressly reserve
21 their respective rights regarding the prosecution and defense of this Action, including all available
22 defenses and affirmative defenses, and arguments that any claim in the Action could not be
23 certified as a class action and/or managed as a representative action.

24 Plaintiffs shall file and serve a report/declaration summarizing all distributions made
25 pursuant to the approved Settlement on or before _____.

26 12. The Court sets an OSC re Compliance with the terms of the Settlement for
27 _____.

1 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

2 1. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court hereby enters
3 judgment consistent with and as expressly set forth in the terms of the Settlement, as modified by
4 the Final Approval Order.

5 2. Except as set forth in the Agreement and this Final Approval Order and Judgment,
6 Plaintiffs, and all members of the Class, shall take nothing in the Action.

7 3. Without affecting the finality of this Judgment, and pursuant to California Code of
8 Civil Procedure section 664.6, the Court shall retain jurisdiction to construe, interpret, implement
9 and enforce the Agreement, to hear and resolve any contested challenge to a claim for settlement
10 benefits, and to supervise and adjudicate any dispute arising from or in connection with the
11 distribution of settlement benefits.

12 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
13 provided in the Agreement and in this Final Approval Order and Judgment.

14 5. As of the date Defendant fully funds the Maximum Gross Settlement Amount, each
15 "Participating Class Member" shall expressly and irrevocably release, acquit, and forever
16 discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all
17 "Released Class Claims" against the "Released Parties."

18 6. As used in paragraph 4 above, the quoted terms have the meanings set forth below:

19 (a) "Participating Class Member" means a Class Member who does not submit
20 a valid and timely Election Not to Participate in Settlement.

21 (b) "Released Class Claims" means any and all claims, debts, liabilities,
22 demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys'
23 fees, damages, liquidated damages, actions or causes of action of whatever kind or nature, whether
24 known or unknown, contingent or accrued, against the Released Parties that accrued during the
25 Class Period for Class Members, including but not limited to Collective Members, and that arise
26 out of or relate to the allegations asserted in the First Amended Complaint, that are asserted in the
27 First Amended Complaint, or that could have been asserted in the First Amended Complaint based
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1 on the allegations in the First Amended Complaint, whether in contract or based on putative
2 violations of any federal, state, city, or local law. The Released Class Claims include all claims
3 arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum
4 wages, overtime, double time, or premium pay of any other kind, meal period violations, rest
5 break violations, wage statement violations, the failure to keep accurate payroll records, suitable
6 seating violations, the failure to timely pay wages during employment and upon termination of
7 employment, the failure to reimburse employees for business expenses, all related claims for civil
8 and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, all
9 claims under PAGA that could have been premised on the Released Class Claims, all claims under
10 the California Business & Professions Code section 17200 *et seq.* that could have been premised
11 on the Released Class Claims, all claims under the Fair Labor Standards Act, the California Labor
12 Code, the applicable IWC Wage Orders, and any other federal, state, city, or local law regarding
13 wages and hours, including any and all claims arising from the factual allegations in the First
14 Amended Complaint that the Class Members and Participating Collective Members do not know
15 or suspect to exist in their favor, which if known by them, would have materially affected the
16 Settlement and the release of the Released Parties. The Released Class Claims exclude all other
17 claims, including claims for vested benefits other than wages, wrongful termination,
18 unemployment insurance, disability, social security, workers' compensation, and class claims
19 outside of the Class Period, and PAGA claims outside of the PAGA Period.

20 (c) "Released Parties" means Defendant and its current or past predecessors,
21 successors, affiliates, subsidiaries, parent companies, divisions, current and past employees,
22 insurers, agents, consultants, legal representatives, and any other related entities, and all of their
23 past, present and future officers, shareholders, owners, members, directors, partners, agents,
24 managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest,
25 and underwriters.

26 7. As of the date Defendant fully funds the Maximum Gross Settlement Amount, each
27 "Participating Collective Member" shall expressly and irrevocably release, acquit, and forever
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1 discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all
2 “Released FLSA Claims” against the Released Parties. The settlement check to the Participating
3 Collective Members shall contain, on the back of the check, the following language: “By
4 endorsing, negotiating, or cashing this check, I affirmatively consent to join and opt into the
5 *Armstrong, et al. v. Prometric, LLC* lawsuit pursuant to 29 U.S. Code Section 216(b) for the
6 purpose of becoming a party and releasing all claims against the Released Parties under the Fair
7 Labor Standards Act that arise out of or relate to the Released Class Claims during the Collective
8 Period.”

9 8. As used in paragraph 6 above, the quoted terms have the meanings set forth below:

10 (a) “Participating Collective Members” means all Collective Members who
11 timely sign, cash, deposit or otherwise negotiate a settlement check.

12 (b) “Released FLSA Claims” means any and all claims, debts, liabilities,
13 demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys’
14 fees, damages, liquidated damages, actions or causes of action of whatever kind or nature, whether
15 known or unknown, contingent or accrued, against the Released Parties that accrued during the
16 Collective Period, and that arise out of or relate to the allegations asserted in the First Amended
17 Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in
18 the First Amended Complaint based on the allegations in the First Amended Complaint, whether
19 in contract or based on putative violations of the Fair Labor Standards Act or its interpreting
20 regulations. The Released FLSA Claims include all claims arising from the factual allegations in
21 the First Amended Complaint for unpaid wages, minimum wages, overtime, or premium pay of
22 any other kind, the failure to keep accurate payroll records, the failure to timely pay wages during
23 employment and upon termination of employment, and all related claims for civil and statutory
24 penalties, interest, liquidated damages, attorneys’ fees, costs, and expenses, including any and all
25 claims arising from the factual allegations in the First Amended Complaint that the Participating
26 Collective Members do not know or suspect to exist in their favor, which if known by them, would
27 have materially affected the Settlement and the release of the Released Parties.

1 9. As of the date Defendant fully funds the Maximum Gross Settlement Amount, the
2 “Aggrieved Employees,” on their own behalf, on behalf of their heirs, assigns and estates, and in
3 their representative capacities on behalf of the State of California, shall expressly and irrevocably
4 release, acquit, and forever discharge, any and all “Released PAGA Claims” against the Released
5 Parties. The release and extinguishment of the Released PAGA Claims shall be effective and
6 binding on all Aggrieved Employees, including Aggrieved Employees who are Non-Participating
7 Class Members.

8 10. As used in paragraph 8 above, the quoted terms have the meanings set forth below:

9 (a) “Aggrieved Employees” means all individuals employed by Defendant in
10 California as non-exempt employees at any time during the PAGA Period, but excluding
11 individuals who released Defendant from wage and hour claims for the Class Period, including
12 those wage and hour claims released as part of a general release of claims.

13 (b) “Released PAGA Claims” means any and all any and all claims under the
14 PAGA that were asserted or alleged in Plaintiffs’ letters to the LWDA and the First Amended
15 Complaint or that reasonably relate to factual allegations in Plaintiffs’ letters to the LWDA or the
16 First Amended Complaint, including all claims for penalties, interest, attorneys’ fees, costs and
17 expenses, and other remedies available under PAGA.

18 11. As of the date Defendant fully funds the Maximum Gross Settlement Amount, in
19 addition to the waiver and release of Released Class Claims, Released FLSA Claims and Released
20 PAGA Claims, as set forth above, and in consideration for the Class Representative Service
21 Payments, each Plaintiff, on behalf of themselves and on behalf of each of their heirs, executors,
22 administrators, successors and assigns, shall expressly and irrevocably release, acquit, and forever
23 discharge the Released Parties of and from any actions, causes of action, suits, debts, dues, sums
24 of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies,
25 agreements, promises, judgments, obligations, union grievances, claims, charges, complaints,
26 appeals and demands whatsoever, in law or equity, which they may have against Released Parties,
27 from the beginning of time through July 3, 2021, whether known or unknown, asserted or
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1 unasserted, including, but not limited to, any alleged violation of: Title VII of the Civil Rights Act
2 of 1964, 42 U.S.C. § 2000e *et seq.*; the Civil Rights Act of 1991, Pub. L. No. 102-166, Sections
3 1981 through 1988 of Title 42 of the United States Code, 42 U.S.C. §§ 1981-1988; the Fair Labor
4 Standards Act of 1938, 29 U.S.C. § 201 *et seq.*; the Occupational Safety and Health Act of 1970,
5 29 U.S.C. § 651 *et seq.*; the Immigration Reform and Control Act, as amended; the Workers
6 Adjustment Retraining Notification Act, as amended; the Family and Medical Leave Act; the
7 California Fair Employment and Housing Act; the California Family Rights Act; the California
8 Labor Code; the California Industrial Wage Commission Wage Orders, any other federal, state,
9 city, or local human rights, civil rights, wage and hour, wage payment, pension, employee
10 benefits, labor or other laws, rules, regulations and/or guidelines, constitutions or ordinances; any
11 contract (whether oral or written, express or implied) or tort laws; any claim arising under the
12 common law; any other claim for unpaid wages, employment discrimination, retaliation, wrongful
13 termination, constructive discharge, pain and suffering, mental anguish, intentional and/or
14 negligent infliction of emotional distress; any claim for costs, fees, or other expenses, including
15 attorneys' fees or any other action against Released Parties, based upon any conduct occurring up
16 to and including July 3, 2021.

17 12. As of the date Defendant fully funds the Maximum Gross Settlement Amount, each
18 Participating Class Member, Participating Collective Member, and Aggrieved Employee shall be
19 and hereby is forever barred and enjoined from prosecuting the Released Class Claims, the
20 Released FLSA Claims, and the Released PAGA Claims set forth in the Agreement against
21 Defendant and/or the Released Parties, and every such released claim as set forth above of each
22 and every Participating Class Member, Participating Collective Member and Aggrieved Employee
23 is and shall be deemed to be conclusively released and discharged as against the Defendant and the
24 Released Parties. All Participating Class Members, Participating Collective Members and
25 Aggrieved Employees are forever barred from pursuing, or seeking to reopen, any of the Released
26 Class Claims, the Released Collective Claims, and the Released PAGA Claims.

1 13. Class Counsel shall post a copy of this Judgment for thirty (30) calendar days on its
2 website in compliance with Rule 3.771(b) of the California Rules of Court in order to provide
3 notice to the Class Members of this Judgment.

4 14. This document shall constitute a judgment (and separate document constituting said
5 judgment) for purposes of California Rules of Court, Rule 3.769(h).

6 15. This Judgment is intended to be a final disposition of the above-entitled action in
7 its entirety, and it is intended to be immediately appealable.

8 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

9
10 Dated: _____

11 _____
12 HON. MAREN E. NELSON
13 JUDGE, SUPERIOR COURT OF CALIFORNIA
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EXHIBIT #2

FIRST AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This First Amended Class Action Settlement Agreement (“Agreement”) is made by and between plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) and defendant Prometric LLC (“Defendant”). Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the lawsuit filed by Plaintiffs against Defendant in the Superior Court of the State of California, County of Los Angeles, captioned *Armstrong, et al. v. Prometric, LLC* Case No. 20STCV29967, including the complaint and any amendments thereto filed in the Action.
- B. “Aggrieved Employees” means all individuals ~~who worked for~~foreemployed by Defendant in California as non-exempt employees at any time during the PAGA Period, but excluding individuals who released Defendant from wage and hour claims for the Class Period, including those wage and hour claims released as part of a general release of claims.
- C. “Class” means all individuals employed by Defendant in California as non-exempt employees at any time during the Class Period, but excluding individuals who released Defendant from wage and hour claims for the Class Period, including those wage and hour claims released as part of a general release of claims.
- D. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- F. “Class Data” means, for each Class Member, the Class Member’s name, last-known mailing address, Social Security number, employee identification number, personal email address (if known), dates of employment, Workdays worked during the Class Period as a Class Member, Workdays worked as a Collective Member, and Workdays worked during the PAGA Period.
- G. “Class Member” means a member of the Class.

- H. “Class Notice” means the Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval substantively in the form attached hereto, other than formatting changes to facilitate printing by the Settlement Administrator, as Exhibit A to this Agreement and incorporated by reference into this Agreement.
- I. “Class Period” means August 7, 2016 to July 3, 2021.
- J. “Class Representative Service Payment” means the service award authorized by the Court and paid to each Plaintiff for serving as a representative of the Class, initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiffs were unsuccessful in the prosecution of the Action, and the general release of all claims in favor of Defendant in this Agreement.
- K. “Collective Members” means all individuals employed by Defendant in California as non-exempt employees at any time during the Collective Period, but excluding individuals who released Defendant from FLSA claims for the Collective Period, including those wage and hour claims released as part of a general release of claims.
- L. “Collective Period” means August 7, 2017 to July 3, 2021.
- M. “Court” means the Superior Court of the State of California, County of Los Angeles.
- N. “Defense Counsel” means Robin Samuel and Teresa H. Michaud of Baker & McKenzie LLP.
- O. “Effective Date” means the date by which this Settlement is finally approved by the Court on the terms and conditions set forth in this Agreement and the Judgment has been entered and becomes irrevocable and binding, upon the later of: (i) in the event of a timely appeal filed by a Participating Class Member who has moved to intervene in the Action and/or moved to set aside the Judgment, the date of final affirmance of the Judgment on appeal; (ii) in the event of a timely appeal filed by a Participating Class Member who has moved to intervene in the Action and/or moved to set aside the Judgment, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on certiorari to review the Judgment; (iii) five days after the expiration date of the time for the filing or noticing of any appeal from the Judgment if any objections are served on the Settlement Administrator; or (iv) if no Participating Class Member has objected to the Settlement, moved to intervene, or moved to set aside the Judgment, the date of entry of the Judgment. For purposes of clarity, the Effective Date cannot occur, and Defendant will not be obligated to fund this Settlement, until and unless there is no possibility of an appeal or further appeal that could potentially prevent the Settlement and this Agreement from becoming final and binding.

- P. “Election Not to Participate in Settlement” means a valid and timely written request by a Class Member, submitted in accordance with the instructions in the Class Notice, to exclude himself or herself from the Settlement.
- Q. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to grant final approval to, and implement the terms of, the Settlement in this Agreement.
- R. “FLSA” means the Fair Labor Standards Act.
- S. “Individual Settlement Payment” shall mean the payment made to each Plaintiff, Participating Class Member, Participating Collective Member, and Aggrieved Employee for his or her share of the Net Settlement Amount.
- T. “Maximum Gross Settlement Amount” means the gross amount of Eight Hundred Eighty Thousand Dollars (\$880,000), which is the maximum amount to be paid by Defendant for the Settlement. The Maximum Gross Settlement Amount is a non-reversionary, “all in” payment that shall satisfy Defendant’s obligation to make any and all payments and disbursements associated with the Settlement, except for the employer’s share of payroll taxes on the Wage Portion of the Individual Settlement Payments, which shall be paid by Defendant in addition to the Maximum Gross Settlement Amount. The Maximum Gross Settlement Amount includes, but is not limited to, all Individual Settlement Payments, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and PAGA Payment.
- U. “Judgment” means the final approval order and judgment entered by the Court in the Action following the Final Approval Hearing substantially in the form attached hereto as Exhibit C.
- V. “Net Settlement Amount” means the Maximum Gross Settlement Amount less all Court-approved Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, PAGA Payment, and Settlement Administration Expenses.
- W. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- X. “PAGA” means the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*
- Y. “PAGA Period” means June 3, 2019 to July 3, 2021.
- Z. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- AA. “Participating Collective Members” means all Collective Members who timely sign, cash, deposit or otherwise negotiate a settlement check.

- BB. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- CC. “Released Parties” means Defendant and its current or past predecessors, successors, affiliates, subsidiaries, parent companies, divisions, current and past employees, insurers, agents, consultants, legal representatives, and any other related entities, and all of their past, present and future officers, shareholders, owners, members, directors, partners, agents, managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest, and underwriters.
- DD. “Response Deadline” means the forty-fifth (45th) calendar day after the Settlement Administrator mails the Class Notice. If a Class Notice is re-mailed by the Settlement Administrator, the Response Deadline for that Class Member will be the later of 15 days from the date of remailing of the Class Notice or the original Response Deadline.
- EE. “Settlement” means the settlement of the Action and all related claims in accordance with this Agreement.
- FF. “Settlement Administrator” means the third party settlement administrator jointly selected by the Parties, as approved by the Court.
- GG. “Settlement Administration Expenses” means the Settlement Administrator’s reasonable fees and expenses to carry out administration of the Settlement in an amount not to exceed \$15,000.
- HH. “Workday” means all hours of work between 12:00 a.m. and 11:59 p.m. of each day, regardless of whether Class Members took breaks or worked a continuous block of time within that day.

II. RECITALS

- A. On May 7, 2020, Plaintiff Sara Armstrong sent a letter to the Labor Workforce and Development Agency (“LWDA”) alleging that Defendant purportedly violated various provisions of the California Labor Code.
- B. On July 30, 2020, Plaintiffs Armstrong and Wallace sent an amended letter to the LWDA, alleging that Defendant purportedly violated additional provisions of the California Labor Code.
- C. On August 7, 2020, Plaintiffs filed a “Class Action Complaint” initiating the Action against Defendant in the Court. Plaintiffs asserted in the Class Action Complaint that Defendant:
1. Violated California Business and Professions Code § 17200 *et seq.*;
 2. Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1;

3. Failed to pay overtime wages in violation of California Labor Code § 510, *et seq.*;
 4. Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 5. Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 6. Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;
 7. Failed to reimburse employees for required expenses in violation of California Labor Code § 2802; and,
 8. Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203.
- D. Defendant denies all of Plaintiffs' claims asserted in the Action, and denies that Plaintiffs have been injured or damaged in any sum or manner. Defendant contends that at all times, Defendant has fully complied with all of its obligations under the California Labor Code and the applicable Wage Orders, and has properly compensated all Class Members, Collective Members and Aggrieved Employees.
- E. On March 3, 2021, the Parties participated in an all-day mediation presided over by David Rotman, a highly experienced and respected mediator of wage and hour representative and class actions. Following the mediation, the Parties, represented by their respective counsel, were able to reach agreement on the terms of a settlement of the Action, with the settlement terms memorialized in a Memorandum of Understanding.
- F. Before seeking Preliminary Approval of the Settlement, Plaintiffs will file and serve a First Amended Complaint in the Action pursuant to a stipulation of the Parties. In addition to the facts, causes of action, and claims asserted in the Class Action Complaint, the First Amended Complaint will assert factual predicates and causes of action for alleged violations of the minimum wage, overtime and recordkeeping provisions of the FLSA. The First Amended Complaint also will assert PAGA claims and alleged PAGA violations based on all of the factual and legal allegations asserted in the Action, or that could have been asserted in the Action, based on the facts and claims alleged in the Class Action Complaint and the PAGA notices served by Plaintiffs on Defendant and the LWDA on May 7, 2020 and July 30, 2020. Plaintiffs will file and serve the First Amended Complaint within ten (10) court days from the execution by all Parties of this Agreement.
- G. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of wrongdoing or liability for the claims asserted in the

Action, or that any of the asserted claims or causes of action have legal or factual merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Maximum Gross Settlement Amount.** Subject to the terms and conditions of this Agreement and Court approval, Defendant shall deposit the Maximum Gross Settlement Amount into the QSF established by the Settlement Administrator within fifteen (15) days of the Effective Date. All of the Maximum Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Maximum Gross Settlement Amount will revert to Defendant.
- B. **Payments from the Maximum Gross Settlement Amount.** Subject to the terms and conditions of this Agreement and Court approval, the Settlement Administrator will make the following payments from the Maximum Gross Settlement Amount after the Effective Date:
 - 1. **To Plaintiffs:** In addition to the Individual Settlement Payments to be paid to each Plaintiff as a Participating Class Member, each Plaintiff will apply to the Court for, and Defendant will not oppose, an award of a Class Representative Service Payment in the amount of \$10,000, which is combined total of \$20,000 in Class Representative Service Payments. The Settlement Administrator will pay the Class Representative Service Payments awarded by the Court out of the Maximum Gross Settlement Amount within thirty (30) days of the Effective Date. If the Court awards Class Representative Service Payments of less than \$10,000 for each Plaintiff, the difference will remain part of the Net Settlement Amount that will be distributed pro rata to Participating Class Members and Collective Members. The Class Representative Service Payments will be made by the Settlement Administrator without tax withholding or deductions, and will be reported by the Settlement Administrator to each Plaintiff on a Form 1099. Each Plaintiff shall be exclusively and solely responsible for any and all taxes and withholdings owed on the Class Representative Service Payments. Each Plaintiff acknowledges and agrees that the Class Representative Service Payments serve as consideration for the general release of all claims, including a waiver of unknown claims and similar rights under California Civil Code section 1542, granted by each Plaintiff to Defendant under this Agreement.
 - 2. **To Class Counsel:** Class Counsel will apply to the Court for, and Defendant will not oppose, an award of not more than one third (33%) of the Maximum Gross Settlement Amount, as the Class Counsel Fees Payment. Class Counsel also will apply to the Court for an award of not

more than \$25,000 for all expenses incurred in the Action and documented in Class Counsel's records as the Class Counsel Litigation Expenses Payment. The Settlement Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment awarded by the Court out of the Maximum Gross Settlement Amount within thirty (30) days of the Effective Date. If the Court awards a Class Counsel Fees Payment of less than one third of the Maximum Gross Settlement Amount, or a Class Counsel Litigation Expenses Payment of less than \$25,000, the difference will remain part of the Net Settlement Amount that will be distributed pro rata to Participating Class Members and Collective Members. The Class Counsel Fees Payments and Class Counsel Litigation Expenses Payments will be made by the Settlement Administrator without tax withholding or deductions, and will be reported by the Settlement Administrator to Class Counsel on a Form 1099. Class Counsel shall be exclusively and solely responsible for any and all taxes and withholdings owed on the Class Counsel Fees Payments and Class Counsel Litigation Expenses Payments.

3. **To the Aggrieved Employees and LWDA.** Plaintiffs will seek approval from the Court to allocate \$30,000 of the Maximum Gross Settlement Amount (the "PAGA Payment") to the settlement of the PAGA claims asserted in the First Amended Complaint. The PAGA Payment approved by the Court shall be allocated and paid by the Settlement Administrator within thirty (30) days of the Effective Date as follows: (a) seventy five percent (75%) to the LWDA as the LWDA's share of civil penalties paid under this Agreement pursuant to the PAGA and (b) Twenty five percent (25%) to the Aggrieved Employees, to be distributed pro rata based on their respective Workdays during the PAGA Period. If the Court approves a PAGA Payment of less than \$30,000, the difference will remain part of the Net Settlement Amount that will be distributed pro rata to Participating Class Members and Collective Members. The Settlement Administrator will determine, in its sole discretion, how to classify and report the PAGA Payments to Aggrieved Employees for tax purposes. The PAGA Payments will be made to the Aggrieved Employees regardless of whether they are Participating Class Members.
4. **To the Settlement Administrator.** Plaintiffs will seek approval from the Court for authorization to pay the Settlement Administration Expenses from the Maximum Gross Settlement Amount. The Settlement Administrator will deduct the Settlement Administration Expenses approved by the Court from of the Maximum Gross Settlement Amount within thirty (30) days of the Effective Date, and will report the payment to the Settlement Administrator on a Form 1099. If the Court approves Settlement Administration Expenses of less than \$15,000, the difference will remain part of the Net Settlement Amount that will be distributed pro rata to Participating Class Members and Collective Members.

C. **Payments from the Net Settlement Amount.** Subject to the terms and conditions of this Agreement and Court approval, the Settlement Administrator will calculate and pay the Individual Settlement Payment for each Participating Class Member from the Net Settlement Amount after the Effective Date.

1. **Calculation.** Each Participating Class Member's Individual Settlement Payment will be calculated as follows:

- a. The Net Settlement Amount shall be divided by the total Workdays for all Participating Class Members to determine the "Workday Payment Amount."
- b. The gross amount of each Participating Class Member's Individual Settlement Payment shall be calculated by multiplying the Participating Class Member's individual Workday total by the Workday Payment Amount.

2. **Taxes and Withholding.**

- a. Twenty five percent (25%) of each Participating Class Member's Individual Settlement Payment shall be allocated to the settlement of wage claims (the "Wage Portion"). The Wage Portion shall be subject to tax withholdings and deductions and reported by the Settlement Administrator to each Participating Class Member on a Form W-2. The Settlement Administrator shall be responsible for calculating, withholding and remitting to the relevant tax authorities all tax withholdings and deductions on the Wage Portion, including the employer's share and employee's share of such taxes and withholdings.
- b. Seventy five percent (75%) of each Participating Class Member's Individual Settlement Payment shall be allocated to the settlement of claims for non-wage interest and statutory penalties (the "Non-Wage Portion"). The Non-Wage Portion will not be subject to tax withholdings or deductions, and will be reported by the Settlement Administrator to each Participating Class Member on a Form 1099.
- c. Plaintiffs, Class Counsel, and Participating Class Members shall be solely responsible for all taxes associated with the their Individual Settlement Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, their share of the PAGA Payment, and Class Representative Service Payments, except for the employer's share of payroll taxes on the Wage Portion of the Individual Settlement Payments.
- d. The employee portion of applicable income taxes for the Wage Portion and any tax responsibility for the Non-Wage Portion or other payments shall be the sole responsibility of each

Participating Class Member. The Class Notice shall advise Class Members to seek tax advice regarding any tax consequences of the Settlement.

- e. The Participating Class Members agree to hold harmless Defendant, Class Counsel, and Defense Counsel for any tax liability, including penalties and interest, arising out of or relating to any Participating Class Member's failure to report or pay taxes on any amounts paid pursuant to this Settlement.
- f. The Settlement Administrator shall be solely responsible for making required and proper tax withholdings and complying with tax reporting obligations.

3. **Class Members Who Opt Out Of Settlement.** Non-Participating Class Members will not receive an Individual Settlement Payment. The portion of the Net Settlement Amount that would have been allocated to Non-Participating Class Members but for their submission of an Election Not to Participate in Settlement will remain part of the Net Settlement Amount available for distribution to Participating Class Members.

4. **Collective Members Who Do Not Cash or Negotiate Checks.** If, for any reason, Collective Members do not cash or negotiate their Individual Settlement Payments, such Individual Settlement Payments shall be voided by the Settlement Administrator and shall not be redistributed to Class Members, but shall instead be donated to the Cy Pres Recipients pursuant to section III(E)(10) of this Agreement.

5. **Class Size Modification.** According to Defendant's records, there are approximately 241 Class Members who worked an estimated 63,500 Workdays during the Class Period. Defendant will provide a declaration in conjunction with the filing of the Motion for Preliminary Approval confirming the number of Class Members and estimated Workdays during the Class Period. In no event shall the total payments to the Class Members exceed the Net Settlement Amount. However, should the total number of Workdays in the Class Period increase by more than ten percent (10%) above 63,500, Defendant will pay an additional amount on top of the Net Settlement Amount so that the Net Settlement Amount shall increase by a percentage equal to the percentage increase in total Workdays over 63,500 less ten percent (10%).

D. **Appointment of Settlement Administrator.** The Parties will obtain three quotes from mutually acceptable and qualified settlement administrators to choose the Settlement Administrator. In the Motion for Preliminary Approval, the Parties will ask the Court to appoint the Settlement Administrator to administer the Settlement. As a condition of appointment, the selected Settlement Administrator will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class Members;

conducting a National Change of Address search to update Class Member addresses before mailing the Class Notices; re-mailing Class Notices that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notices and receipt of completed Elections Not to Participate in Settlement; calculating Individual Settlement Payments; issuing the checks to effectuate the payments due under the Settlement; making proper tax withholdings and complying with tax reporting obligations, including preparing, delivering and filing all necessary tax forms, returns, notices and reports required to effectuate the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice, will be paid out of the Maximum Gross Settlement Amount.

The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1 and Employer Identification Number for the Settlement in order to calculate payroll withholdings for taxes, and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities.

E. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

- a. Within twenty one (21) days of execution of this Settlement Agreement, Plaintiffs will file a Preliminary Approval Motion with the Court to seek an order preliminarily approving the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval").
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit a proposed "Order Granting Preliminary Approval of the Settlement" substantially in the form evidenced by Exhibit B to this Agreement.
- c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court, including whether the proposed Settlement should proceed.

2. Notice to Class Members. After the Court enters an Order Granting Preliminary Approval of the Settlement, each Class Member will be sent

the Class Notice revised to conform to the Order Granting Preliminary Approval of the Settlement as follows:

- a. No later than 14 days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. The Settlement Administrator will maintain the confidentiality of the Class Data, and will not disclose the information to anyone, except (i) as required to applicable taxing authorities; (ii) in order for the Settlement Administrator to carry out the reasonable efforts described in section III(E)(2)(b) and III(E)(2)(c); or (iii) pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and administration only. This provision shall not be construed to impede Class Counsel's ability to discharge their fiduciary duties to the Class, and if additional disclosures are necessary, Class Counsel will obtain written authorization of Defendant and/or an order from the Court.
- b. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice. The Settlement Administrator will send the Class Notice via first-class regular United States mail to all Class Members using the updated mailing address information and no later than 14 days after receiving the Class Data.
- c. If a Class Notice is returned as undeliverable without a forwarding address, the Settlement Administrator will promptly, and no later than fourteen (14) days from receipt of the returned Class Notice, conduct one skip-trace address search for a more current address for the Class Member and re-mail the Class Notice to the Class Member if a new address is found. If a Class Notice is returned as undeliverable but with a forwarding address, the Settlement Administrator will promptly, and no later than seven (7) business days from receipt of the returned Class Notice, re-mail the Class Notice to the Class Member using the forwarding address. If the Class Notice is re-mailed, the Response Deadline for that Class Member will be extended by 15 days from the date of the original Response Deadline, and the extended Response Deadline will be set forth in the re-mailed Class Notice and the Settlement Administrator will note for its own records and notify Class Counsel and Defense Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.
- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defense Counsel of the number of

valid and deficient Elections Not to Participate in Settlement it receives and number and content of each objection received.

- e. Not later than 10 days before the date by which the Plaintiffs file the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections Not to Participate) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Disputes as to Allocated Workdays; Elections Not to Participate in Settlement.** Class Members may submit objections to the Settlement, disputes as to the number of Workdays allocated to Class Members, and Elections Not to Participate in Settlement pursuant to the following procedures:

- a. **Objections to Settlement.** Only Participating Class Members may object to the Settlement, including but not limited to the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments specified in the Settlement. The Class Notice shall inform Class Members that Participating Class Members may object to the Settlement either in writing or orally at the Final Approval Hearing. Written objections must be submitted to the Settlement Administrator by the Response Deadline, and if mailed, must be postmarked no later than the Response Deadline. Written objections shall set forth the grounds for each objection and comply with the instructions in the Class Notice, however a written objection shall not be per se invalid simply because it does not contain all of the information requested. Written objections may also be faxed or emailed to the Settlement Administrator as indicated in the Class Notice. Participating Class Members may appear at the Final Approval Hearing to orally object to the Settlement. Non-Participating Class Members shall not be entitled or eligible to comment on or object to the Settlement.
- b. **Disputes as to Workday Allocation.** Each Class Member may dispute the number of Workdays allocated to the Class Member in the Class Notice. Any notice of dispute must be received by Settlement Administrator by the Response Deadline, and shall be resolved by the Settlement Administrator in its discretion with input and assistance from Defense Counsel as needed. A dispute

may also be faxed or emailed to the Settlement Administrator as indicated in the Class Notice.

- c. **Election Not to Participate in Settlement.** Class Members who wish to exclude themselves from the Settlement may do so by mailing a valid Election Not to Participate in Settlement to the Settlement Administrator by the Response Deadline. To be valid and effective, an Election Not to Participate in Settlement must be complete, signed by the Class Member, postmarked by the Response Deadline, and otherwise submitted in compliance with the instructions in the Class Notice, however an Election Not to Participate in Settlement shall not be per se invalid simply because it does not contain all of the information requested. An Election Not to Participate may also be faxed or emailed to the Settlement Administrator as indicated in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. Each Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment, except that each Aggrieved Employee will still be paid his or her allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether the Aggrieved Employee is a Non-Participating Class Member. Notwithstanding any other provision of this Agreement, Defendant is free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense that Defendant may assert against such a claim. Every Class Member who does not submit a valid Election Not to Participate in Settlement in the manner specified in this section will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the release of the Released Class Claims. Non-Participating Class Members shall not be permitted or entitled to submit objections to the Settlement or appear at the Final Approval Hearing.
 - d. **Report.** Not later than ten (10) calendar days after the Response Deadline, the Settlement Administrator will provide Class Counsel and Defense Counsel with a complete and accurate list of all Non-Participating Class Members.
4. **Right to Terminate Settlement.** If the number of Non-Participating Class Members exceeds five percent (5%) of the Class, Defendant, in its sole discretion, shall have the right but not the obligation to terminate the Settlement and rescind this Agreement. Defendant shall exercise its revocation rights, if at all, within twenty one (21) days of the Response Deadline, as extended for Class Notice remailings, by providing written

notice of revocation to Class Counsel. If Defendant exercises its revocation rights, the Parties will have no further obligations under the Settlement, and Defendant shall have no obligation to pay any portion of the Maximum Gross Settlement Amount or any other amount under this Agreement.

5. **No Solicitation.** The Parties, Class Counsel and Defense Counsel shall not encourage any Class Member to opt out of the Settlement, object to the Settlement, or appeal from the Judgment. Class Counsel shall not initiate any contact or other communications with Class Members, but may respond to inquiries received from Class Members. Additionally, to the extent any Class Members are current employees of Defendant, Defendant shall be free to communicate with those individuals regarding their employment duties in the ordinary course of business.
6. **Additional Briefing and Final Approval.**
 - a. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments no later than the date Plaintiffs file the motion for final approval, with such motion scheduled to be heard by the Court at the Final Approval Hearing.
 - b. Not later than sixteen (16) court days before the Final Approval Hearing, Plaintiffs will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administration Expenses.
 - c. If any opposition is filed to the motion for final approval and/or the motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Payment, then not later than five (5) court days before the Final Approval Hearing, Plaintiffs and/or Defendant may file a reply in support of the motion for final approval, and Plaintiffs and Class Counsel may also file a reply in support of their motion for the Class Representative Service Payment, the Class Counsel Fees Payments, and the Class Counsel Litigation Expenses Payment.
 - d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court, including whether the proposed Settlement should proceed. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the PAGA Payment, Class Representative Service Payments, the Class Counsel Fees

Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this section.

- e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-judgment matters as may be appropriate under court rules or applicable law.

- 7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiffs and Participating Class Members who did not timely submit an objection to the Settlement, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.
- 8. **Vacation, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then the Parties shall work together in good faith to address any concerns raised by the reviewing court, including whether the proposed Settlement should proceed. The vacation, reversal, or modification of the Court's award of the Class Representative Service Payments or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this section, provided that Defendant's obligation to make payments under this Settlement will remain limited to the Maximum Gross Settlement Amount.
- 9. **Timing of Settlement Funding and Provision of Individual Settlement Payments and Other Payments.** Defendant shall fund the Settlement by depositing the Maximum Gross Settlement Amount into the QSF

established by the Settlement Administrator. The QSF will be established and controlled by the Settlement Administrator after the Court grants final approval of the Settlement, subject to the terms of this Agreement and the Court's orders. Interest, if any, earned on the QSF shall be donated to the *Cy Pres* Recipients as set forth below. Defendant shall deposit the Maximum Gross Settlement Amount into the QSF no later than fifteen (15) days after the Effective Date. For purposes of clarity, if the Effective Date does not or cannot occur, Defendant will not be obligated to fund the Settlement.

10. **Uncashed Individual Settlement Payment and PAGA Payment Checks.** Within thirty (30) days from the funding of the Settlement, the Settlement Administrator will print and mail the Individual Settlement Payments to Participating Class Members and the employees' shares of the PAGA Payment to Aggrieved Employees, along with required tax reporting forms. A Participating Class Member or Aggrieved Employee must cash his or her Individual Settlement Payment and/or PAGA Payment check within 180 days of mailing of the checks. If a check is returned as undeliverable to the Settlement Administrator within 120 days of the original mailing, the Settlement Administrator will make a reasonable but not excessive effort to resend the check to the Participating Class Member and/or Aggrieved Employee at a corrected address. All Individual Settlement Payment and/or PAGA Payment checks that have not been cashed or negotiated by the 180-day deadline shall be deemed stale and voided by the Settlement Administrator.
11. **Individual Settlement Payments to Collective Members.** The Settlement Administrator shall ensure that each check sent to a Collective Member contains, on the back of the check, a limited endorsement stating that by endorsing, negotiating and/or cashing the check, the Collective Member is affirmatively consenting to opt into the lawsuit pursuant to 29 U.S. Code Section 216(b) for the purpose of becoming a party and releasing all claims against the Released Parties under the FLSA that arise out of or relate to the Released Class Claims during the Collective Period.
12. **Cy Pres Recipients.** The funds from all voided Individual Settlement Payment checks and/or PAGA Payment checks, as well as all interest from the QSF and all other unclaimed amounts from the Maximum Gross Settlement Amount will be paid *cy pres* to two recognized 501(c)(3) tax-exempt charities as follows: (1) 50% to Bet Tzedek Legal Services and (2) and 50% to Legal Aid at Work (the "*Cy Pres* Recipients"). Such *cy pres* payments will be made in compliance with Code of Civil Procedure section 384. Pursuant to Code of Civil Procedure section 382.2, counsel for the Parties will submit declarations in conjunction with the Motion for Preliminary Approval affirming that they have no relationship with or connection to the *Cy Pres* Recipients that could create an appearance of impropriety.

13. **Final Report by Settlement Administrator to Court.** Within ten (10) days from disbursement of the Maximum Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration containing a final report on the disbursement of all funds from the Maximum Gross Settlement Amount.

F. Release of Claims.

1. **Participating Class Members.** Upon full funding of the Maximum Gross Settlement Amount by Defendant, the Participating Class Members, including but not limited to Participating Collective Members, shall expressly and irrevocably release, acquit, and forever discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys' fees, damages, liquidated damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, against the Released Parties that accrued during the Class Period for Class Members, and that arise out of or relate to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in the First Amended Complaint based on the allegations in the First Amended Complaint, whether in contract or based on putative violations of any federal, state, city, or local law (the "Released Class Claims"). The Released Class Claims include all claims arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages, overtime, double time, or premium pay of any other kind, meal period violations, rest break violations, wage statement violations, the failure to keep accurate payroll records, suitable seating violations, the failure to timely pay wages during employment and upon termination of employment, the failure to reimburse employees for business expenses, all related claims for civil and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, all claims under PAGA that could have been premised on the Released Class Claims, all claims under the California Business & Professions Code section 17200 *et seq.* that could have been premised on the Released Class Claims, all claims under the Fair Labor Standards Act, the California Labor Code, the applicable IWC Wage Orders, and any other federal, state, city, or local law regarding wages and hours, including any and all claims arising from the factual allegations in the First Amended Complaint ~~all complaints filed in the Action~~ that the Class Members and Participating Collective Members do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties. The Released Class Claims exclude all other claims, including claims for vested benefits other than wages, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period, and PAGA claims outside of the PAGA Period.

2. **Participating Collective Members.** Upon full funding of the Maximum Gross Settlement Amount by Defendant, the Participating Collective Members shall expressly and irrevocably release, acquit, and forever discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys' fees, damages, liquidated damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, against the Released Parties that accrued during the Collective Period, and that arise out of or relate to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in the First Amended Complaint based on the allegations in the First Amended Complaint, whether in contract or based on putative violations of the Fair Labor Standards Act or its interpreting regulations (the "Released FLSA Claims"). The Released FLSA Claims include all claims arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages, overtime, or premium pay of any other kind, the failure to keep accurate payroll records, the failure to timely pay wages during employment and upon termination of employment, and all related claims for civil and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, including any and all claims arising from the factual allegations in the First Amended Complaint. ~~all complaints filed in the Action~~ that the Participating Collective Members do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties. The settlement check to the Participating Collective Members shall contain, on the back of the check, the following language: "By endorsing, negotiating, or cashing this check, I affirmatively consent to join and opt into the *Armstrong, et al. v. Prometric, LLC* lawsuit pursuant to 29 U.S. Code Section 216(b) for the purposes of becoming a party and releasing all claims against the Released Parties under the Fair Labor Standards Act that arise out of or relate to the Released Class Claims during the Collective Period."
3. **Aggrieved Employees.** Upon full funding of the Maximum Gross Settlement Amount by Defendant, the Aggrieved Employees, on their own behalf, on behalf of their heirs, assigns and estates, and in their representative capacities on behalf of the State of California, shall release any and all claims under the PAGA that were asserted or alleged in Plaintiffs' letters to the LWDA and the First Amended Complaint or that reasonably relate to factual allegations in Plaintiffs' letters to the LWDA or the First Amended Complaint, ~~that arise out of or relate to the Released Class Claims and that accrued during the PAGA Period~~, including all claims for penalties, interest, attorneys' fees, costs and expenses, and other remedies available under PAGA (the "Released PAGA Claims"). The release and extinguishment of the Released PAGA Claims shall be effective and binding on all Aggrieved Employees, including Aggrieved Employees who are Non-Participating Class Members.

4. **Plaintiffs.** Upon full funding of the Maximum Gross Settlement Amount by Defendant, in addition to the waiver and release of Released Class Claims, Released FLSA Claims and Released PAGA Claims, as set forth above, and in consideration for the Class Representative Service Payments, Plaintiffs, on behalf of themselves and on behalf of each of their heirs, executors, administrators, successors and assigns, voluntarily release and forever discharge the Released Parties of and from any actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, judgments, obligations, union grievances, claims, charges, complaints, appeals and demands whatsoever, in law or equity, which they may have against Released Parties, from the beginning of time through July 3, 2021, whether known or unknown, asserted or unasserted, including, but not limited to, any alleged violation of: Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*; the Civil Rights Act of 1991, Pub. L. No. 102-166, Sections 1981 through 1988 of Title 42 of the United States Code, 42 U.S.C. §§ 1981-1988; the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.*; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*; the Immigration Reform and Control Act, as amended; the Workers Adjustment Retraining Notification Act, as amended; the Family and Medical Leave Act; the California Fair Employment and Housing Act; the California Family Rights Act; the California Labor Code; the California Industrial Wage Commission Wage Orders, any other federal, state, city, or local human rights, civil rights, wage and hour, wage payment, pension, employee benefits, labor or other laws, rules, regulations and/or guidelines, constitutions or ordinances; any contract (whether oral or written, express or implied) or tort laws; any claim arising under the common law; any other claim for unpaid wages, employment discrimination, retaliation, wrongful termination, constructive discharge, pain and suffering, mental anguish, intentional and/or negligent infliction of emotional distress; any claim for costs, fees, or other expenses, including attorneys' fees or any other action against Released Parties, based upon any conduct occurring up to and including July 3, 2021 (the "Plaintiffs' Released Claims").

Plaintiffs acknowledge that they may discover facts or law different from, or in addition to the facts or law that they know or believe to be true with respect to the Released Class Claims, Released FLSA Claims, Released PAGA Claims, and the Plaintiffs' Released Claims. Plaintiffs agree, nonetheless, that this Agreement and the releases contained in it shall be binding and remain effective in all respects, notwithstanding such different or additional facts or law, or the discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, fraud or duress, and that the releases in this Agreement are full and complete releases, and that they intend that the releases in this Agreement to be final, binding and complete in all respects.

5. **Plaintiffs' Waiver of Rights under California Civil Code Section 1542.** Each Plaintiff acknowledges that he or she has read Section 1542 of the Civil Code of the State of California, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each Plaintiff understands that Section 1542 gives him or her the right not to release existing claims of which each Plaintiff is not now aware, unless each Plaintiff voluntarily chooses to waive this right. **Even though each Plaintiff is aware of this right, each Plaintiff nevertheless hereby voluntarily waives the right described in Section 1542 and any other statutes of similar effect, and elects to assume all risks for claims that now exist in each Plaintiff's favor, *whether known or unknown*, arising from the subject matter of the releases in this Agreement.** Each Plaintiff acknowledges that different or additional facts or legal claims may be discovered in addition to what Plaintiff now knows or believes to be true with respect to the Released Class Claims, Released FLSA Claims, Released PAGA Claim, and Plaintiffs' Released Claims extinguished by this Agreement, and each Plaintiff agrees that this Agreement will be and remain in effect in all respects as a complete and final release of such released claims, notwithstanding any such different or additional facts or legal claims.

6. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to expenses, costs or attorneys' fees against Defendant arising from or related to the Action.
- G. No Effect on Other Benefits.** The Individual Settlement Payments will not result in any additional benefit payments (such as 401(k) contributions or incentive compensation) beyond those provided by this Agreement to Plaintiffs or Participating Class Members, Participating Collective Members, or Aggrieved Employees, and all Plaintiffs, Participating Class Members, Participating Collective Members, and Aggrieved Employees will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- H. Limitation on Public Statements about Settlement.** At no time before or after Plaintiffs file their Motion for Preliminary Approval shall the Parties, Class Counsel, or Defense Counsel (i) hold any press conference or issue any press release or public statement, including without limitation via the Internet, social media or other communication channels, with respect to the Action or the Settlement (except as necessary to comply with legal reporting requirements, such

as Securities and Exchange Commission filings, reports or disclosures); (ii) characterize the Action or Settlement in a manner that disparages any party, their counsel, or the Released Parties; or (iii) otherwise publicize the Action or the Settlement, provided that Class Counsel may refer to the Settlement in adequacy of counsel declarations and may post publicly available documents on their website. If the Parties, Class Counsel, or Defense Counsel are contacted by the media or third parties regarding the Settlement, they shall not comment in any way, except to point to publicly available filings, which Class Counsel may post on Class Counsel's website.

I. Collateral Attack. Plaintiffs agree to participate in, and Class Counsel agree to join Defendant in, defending the Settlement and its approval from any collateral attack in the three (3) year period after the Effective Date by providing a declaration or declarations in support of the Settlement. The Parties and their counsel shall enter into a common interest agreement for the purpose of sharing information necessary to the defense of the Settlement.

J. Miscellaneous Terms.

1. No Admission of Liability or Class Certification for Other Purposes.

- a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiffs that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiffs and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be constructed as an admission by Defendant of any liability or wrongdoing as to Plaintiffs, Class Members, or any other person, and Defendant and the Released Parties specifically disclaim any such liability or wrongdoing. The Settlement and this Agreement are not, and it should not be construed as, an admission of fact or law in the Action or any other proceeding or matter. The Parties have entered into this Settlement with the intention of avoiding further disputes and litigation.
- b. Whether or not the Judgment becomes final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as,

offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiffs or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement, enforcing any and all terms of the Agreement, or for purposes of establishing the release and bar of, or defending against, the Released Class Claims, the Released FLSA Claims, the Released PAGA Claims, or the Plaintiffs' Released Claims.

2. **Integrated Agreement.** This Agreement replaces and supersedes the Memorandum of Understanding signed by the Parties on or about April 2, 2021, and any other agreements, understandings, or representations between the Parties regarding the Settlement, the Action, or any other matter relating or arising out of this Agreement. After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to its subject matter, and no oral or written representation, warranty, covenant, or inducement will be binding on any Party to this Agreement, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
3. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.
4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **No Tax Advice:** Neither Class Counsel nor Defense Counsel intend anything contained in this Settlement to constitute advice regarding taxes

or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

6. **Modification of Agreement.** Except as set forth in section III(J)(3) above, this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after Defendant fully funds the Maximum Gross Settlement Amount, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.
12. **Headings.** The descriptive heading of any section of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiffs and the Class:

Norman B. Blumenthal

Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

Teresa H. Michaud
BAKER & MCKENZIE LLP
1901 Avenue of the Stars, Suite 950
Los Angeles, California 90067
Telephone: (310) 201-4728
Facsimile: (310) 201-4721
E-Mail: Teresa.michaud@bakermckenzie.com

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement, the Action shall be stayed, except to effectuate the terms of this Agreement.
16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under Code of Civil Procedure section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement, and that the time within which to bring this Action to trial under Code of Civil Procedure Section 583.310 shall be extended from the date of the signing of this Agreement by all Parties until the entry of the final approval order and Judgment, or if not entered the date this Agreement shall no longer be of any force or effect.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: _____

Plaintiff Sarah Armstrong

Dated: _____
Plaintiff Robert Wallace

Dated: _____
_____[name]
For Defendant Prometric, LLC

Dated: _____
Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

APPROVED AS TO FORM AND CONTENT:

Dated: _____
Teresa H. Michaud
BAKER & MCKENZIE LLP
Attorney for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

**NOTICE OF PROPOSED SETTLEMENT OF PAGA, CLASS AND COLLECTIVE
ACTION AND HEARING DATE FOR FINAL COURT APPROVAL**

**(Armstrong, et al. v. Prometric LLC, Superior Court of the State of California,
County of Los Angeles, Case No. 20STCV29967)**

**If you worked for Prometric in California as a non-exempt employee between August 7,
2016 and July 3, 2021, you may be entitled to a payment from a settlement.**

**YOUR LEGAL RIGHTS MAY BE AFFECTED BY THIS SETTLEMENT, AND YOU
HAVE A CHOICE TO MAKE. PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING NOW, RECEIVE AND CASH A SETTLEMENT CHECK	If you do nothing, you will remain a part of this case and will be sent a settlement payment of approximately \$<<[REDACTED]>>. The actual amount you receive will be less because of deductions for applicable taxes and due to other factors. If you do not exclude yourself from the Settlement, you will release the Released Class Claims defined in Section 5 below. Collective Members who sign or cash the settlement check also will release the Released FLSA Claims defined in Section 5 below. Aggrieved Employees also will released the Released PAGA Claims defined in Section 5 as part of this Settlement. If the Court approves the Settlement, the settlement check will be mailed to the same address as this notice. It is therefore important that you immediately notify the Settlement Administrator if your address has changed by following the instructions in Section 10 below.
EXCLUDE YOURSELF	If you do not want to participate in the Settlement and instead wish to retain your right to sue Prometric for wage and hour claims under California law, you must submit a written “Election Not to Participate in Settlement” to the Settlement Administrator by following the instructions in Section 7 below. If you elect not to participate in the Settlement, you will not receive any money from the Settlement, you will not be eligible to object to the Settlement, and you will not be bound by the Settlement or the releases. If you are an Aggrieved Employee as defined in Section 1 below, you will receive a PAGA Payment and you will release the Released PAGA Claims even if you exclude yourself from the Settlement.
OBJECT	You may write to the Settlement Administrator about why you object to Settlement or you may appear at the Final Approval Hearing to make an oral objection. If you submit an Election Not to Participate in Settlement, you cannot object to the Settlement. More information about objecting is provided in Section 8 below.

Your options are explained in this Notice. To exclude yourself from or object to the Settlement, you must take action **by the deadlines listed below**. If you are in favor of the Settlement, you

don't need to do anything to obtain your settlement payment. Prometric will not retaliate against you for any actions you take with respect to the Settlement.

1. Why did I get this Notice?

Plaintiffs Sarah Armstrong and Robert Wallace ("Plaintiffs") and Defendant Prometric LLC ("Defendant") have reached a proposed settlement (the "Settlement") of a class, collective, and PAGA lawsuit pending in Los Angeles County Superior Court (the "Court"). The Court authorized the parties to send this Notice to you to inform you about the proposed terms of the Settlement and about all of your options, before the Court decides whether to approve the Settlement.

Defendant's records show you were employed by Defendant in California as a non-exempt employee at some time between August 7, 2016 and July 3, 2021 (the "Class Period") and you have not already released Defendant from wage and hour claims for the Class Period in another matter. You are therefore a member of the Class.

If you worked for Defendant in California as a non-exempt employee at some time between August 7, 2017 and July 3, 2021 (the "Collective Period"), you are also a Collective Member. If you ~~worked for~~ were employed by Defendant in California as a non-exempt employee at some time between June 3, 2019 and July 3, 2021 (the "PAGA Period"), you are also an "Aggrieved Employee."

This Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this lawsuit about?

This lawsuit is about whether Defendant properly paid its California non-exempt employees for minimum wages and overtime, provided meal periods and rest breaks, reimbursed employees for business expenses, provided accurate wage statements, and timely paid wages owed during employment and upon separation. Defendant denies the claims made in the lawsuit and believes that its California non-exempt employees received all wages, payments, breaks, and wage statements to which they were entitled. The Court has not made any ruling on the merits of the claims, and no party has prevailed in the lawsuit.

This lawsuit has been filed as a class action. In a class action, one or more people called "class representatives" sue not only for themselves, but also on behalf of other people who have similar claims. The other people are called "class members" and together are the "Class." Similarly, in a collective action, one or more people can seek to represent a "Collective" of similarly situated people. The individuals who initiated this class/collective action are called the "Plaintiffs." In a class/collective action, the Plaintiffs ask the court to resolve the issues for every member of the Class and Collective. Here, the Court has approved Plaintiffs as the Class Representatives, and the Class/Collective Members are represented by Class Counsel, the law firm Blumenthal Nordrehaug Bhowmik De Blouw LLP.

On August 7, 2020, Plaintiffs filed a class action complaint in the Superior Court of the State of California, County of Los Angeles (the "Complaint"), alleging the following claims against Defendant: unfair competition, failure to pay minimum wages, failure to pay overtime wages,

failure to provide required meal periods, failure to provide required rest periods, failure to timely pay wages, failure to provide expense reimbursement, failure to provide accurate itemized wage statements, and failure to pay wages at termination. As part of this Settlement, Plaintiff is filing a First Amended Complaint to assert factual predicates and causes of action on behalf of a collective of similarly situated people for alleged violations of the minimum wage, overtime and recordkeeping provisions of the Fair Labor Standards Act (“FLSA”), and a claim under the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) (“PAGA”) with respect to the Aggrieved Employees based upon the above alleged violations. This lawsuit is referred to as the “Action.”

3. What are the terms of the Settlement?

Subject to Court approval, Defendant has agreed to pay up to Eight Hundred Eighty Thousand Dollars (\$880,000) (the “Maximum Gross Settlement Amount”) to resolve the claims of all Participating Class Members, Collective Members, and Aggrieved Employees. The Maximum Gross Settlement Amount will be used to pay: (1) the Individual Settlement Payments to Class/Collective Members; (2) attorneys’ fees of up to \$293,333 (one-third of the Maximum Gross Settlement Amount) plus reimbursement of actual litigation expenses and costs of up to \$25,000; (3) Class Representative Service Payments of \$10,000 for each Plaintiff (for a total of \$20,000); (4) a PAGA Payment of \$30,000, of which \$22,500.00 will be paid to the California Labor & Workforce Development Agency and \$7,500 will be paid to the Aggrieved Employees; and (5) the Settlement Administrator’s fees and costs of up to \$15,000. The Settlement is conditioned upon the Court granting final approval of the Settlement and entering an order and judgment.

4. How much will my settlement payment be and how was it calculated?

Calculation of Individual Settlement Payments. The Court has approved the formula used to calculate your settlement payment. The formula considers the number of days you worked (“Workdays”) as a non-exempt employee in California during the Class Period. The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement at www.XXXX.com.

Defendant’s records reflect that you worked << [REDACTED] >> Workdays during the Class Period. Based on the formula preliminary approved by the Court, your settlement payment is estimated to be << [REDACTED] >>.

The Settlement Administrator used information from Defendant’s records to calculate your payment. If you have questions about your calculation, you may contact the Settlement Administrator using the contact information in Section 10 below. If you dispute the number of Workdays and/or the calculation of your settlement payment, you must submit a written, signed dispute challenging the information, along with any documentation supporting your contention, to the Settlement Administrator no later than [45 days after the mailing of the Notice or 60 days after the original mailing date in the case of re-mailing]. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

Calculation of PAGA Payments. To settle the PAGA Released Claims, \$30,000 of the Maximum Gross Settlement Amount will be distributed according to PAGA’s requirements: 75% (\$22,500) will be paid to the California Labor & Workforce Development Agency and 25% (\$7,500) be

paid to the Aggrieved Employees (together, the “PAGA Payment”). If you are an Aggrieved Employee, your share of the PAGA Payment is determined by a formula that considers the total Workdays worked by Aggrieved Employees during the PAGA Period and your individual Workday count during that same period. Your PAGA Payment is in addition to any Individual Settlement Payment you receive as a Participating Class Member. The PAGA Payment shall be allocated and paid to Aggrieved Employees regardless of whether they request exclusion from the Settlement.

Settlement checks that are not cashed within 180 days of issuance will be null and void.

Tax Matters. Twenty-five percent (25%) of each Participating Class Member’s Individual Settlement Payment shall be allocated to the settlement of wage claims (the “Wage Portion”) and the remaining seventy-five percent (75%) will be allocated to interest and penalties (the “Non-Wage Portion”). The PAGA Payment (if any) is allocated entirely to penalties.

The Wage Portion of each Individual Settlement Payment is subject to payroll deductions or applicable taxes and withholdings, for which you will receive a Form W-2. The Non-Wage Portion and PAGA Payment (if any) are not subject to deductions and will be reported on a Form 1099. Neither Class Counsel nor Defense Counsel can advise you regarding the tax consequences of the Settlement. You may wish to consult with your own tax advisor about the tax consequences of the Settlement.

5. What am I giving up by participating in the Settlement?

Regardless of whether you cash a settlement check, if you do not exclude yourself from the Settlement (as described in Section 7 below), you will release the Released Class Claims.

This means that you cannot sue, continue to sue, or be part of any other legal action against Defendant (Prometric) and its current or past predecessors, successors, affiliates, subsidiaries, parent companies, divisions, current and past employees, insurers, agents, consultants, legal representatives, and any other related entities, and all of their past, present and future officers, shareholders, owners, members, directors, partners, agents, managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest, and underwriters (the “Released Parties”) asserting any claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys’ fees, damages, liquidated damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, against the Released Parties that accrued during the Class Period for Class Members, and that arise out of or relate to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in the First Amended Complaint based on the allegations in the First Amended Complaint, whether in contract or based on putative violations of any federal, state, city, or local law (the “Released Class Claims”). The Released Class Claims include all claims arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages, overtime, double time, or premium pay of any other kind, meal period violations, rest break violations, wage statement violations, the failure to keep accurate payroll records, suitable seating violations, the failure to timely pay wages during employment and upon termination of employment, the failure to reimburse employees for business expenses, all related claims for civil and statutory penalties, interest, liquidated damages, attorneys’ fees, costs, and expenses, all claims under PAGA that could have been premised on the Released Class Claims, all claims under the California Business & Professions Code section 17200 *et seq.* that could have been premised on the Released Class

Claims, all claims under the Fair Labor Standards Act, the California Labor Code, the applicable IWC Wage Orders, and any other federal, state, city, or local law regarding wages and hours, including any and all claims arising from the factual allegations in the First Amended Complaint~~all complaints filed in the Action~~ that the Class Members do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties. The Released Class Claims exclude all other claims, including claims for vested benefits other than wages, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period, and PAGA claims outside of the PAGA Period.

This means that, if you do not timely exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and any of the Released Parties about the Released Class Claims. It also means that all of the Court's orders in the Action will apply to you and legally bind you.

If you are a Collective Member and you cash your settlement check, you also will release the Released FLSA Claims. Collective Members who cash their settlement checks will not be able to sue, continue to sue, or be part of any other legal action asserting any claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys' fees, damages, liquidated damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, against the Released Parties that accrued during the Collective Period, and that arise out of or relate to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in the First Amended Complaint based on the allegations in the First Amended Complaint, whether in contract or based on putative violations of the Fair Labor Standards Act or its interpreting regulations (the "Released FLSA Claims"). The Released FLSA Claims include all claims arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages, overtime, or premium pay of any other kind, the failure to keep accurate payroll records, the failure to timely pay wages during employment and upon termination of employment, and all related claims for civil and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, including any and all claims arising from the factual allegations in the First Amended Complaint~~all complaints filed in the Action~~ that the Participating Collective Members do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties. The settlement check to the Participating Collective Members shall contain, on the back of the check, the following language: "By endorsing, negotiating, or cashing this check, I affirmatively consent to join and opt into the *Armstrong, et al. v. Prometric, LLC* lawsuit pursuant to 29 U.S. Code Section 216(b) for the purpose of becoming a party and releasing all claims against the Released Parties under the Fair Labor Standards Act that arise out of or relate to the Released Class Claims during the Collective Period."

The PAGA Released Claims will be released. If you are an Aggrieved Employee, you also will release any and all claims under the Labor Code Private Attorneys General Act of 2004 ~~that were asserted or alleged in Plaintiffs' letters to the LWDA and the First Amended Complaint or that reasonably relate to factual allegations in Plaintiffs' letters to the LWDA or the First Amended Complaint, including all claims for penalties, interest, attorneys' fees, costs and expenses, and other remedies available under PAGA that arise out of or relate to the Released Class and/or FLSA Claims during the PAGA Period, including, without limitation, all claims for penalties, interest, attorneys' fees, costs and expenses, and other remedies available under PAGA~~ (the

“Released PAGA Claims”). The release and extinguishment of the Released PAGA Claims is effective and binding on all Aggrieved Employees, including Aggrieved Employees who are Non-Participating Class Members.

6. How can I get my settlement payment?

If you wish to participate in the Settlement, you do not need to take any action now. You will receive a check for your settlement payment by mail to the same address as this Class Notice. If your mailing address has changed, please contact the Settlement Administrator.

The Court will hold a hearing on [REDACTED], at [REDACTED] to decide whether to give final approval to the Settlement. If the Court grants final approval and there are no objections or appeals, settlement payments will be mailed approximately two months after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient and update the Settlement Administrator if your address changes.

7. What if I don't want to be a part of the Settlement?

If you do not wish to release your Released Class Claims, then you must take steps to exclude yourself from the Settlement. This is sometimes referred to as “opting out” of the Settlement.

If you wish to exclude yourself from the Settlement, you must submit a written “Election Not to Participate in Settlement.” **If you exclude yourself, you will not receive an Individual Settlement Payment and you will not be bound by the Settlement terms, which means you will retain the right to sue Defendant for the Released Class Claims and Released FLSA Claims.** However, if you are an Aggrieved Employee, you will receive a PAGA Payment and you will release all Released PAGA Claims even if you exclude yourself from the Settlement. You should be aware that your claims are subject to a statute of limitations, which means that they will expire on a certain date.

To exclude yourself from the Settlement, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated Election Not to Participate in Settlement. The Election Not to Participate in Settlement must be postmarked by or received no later than [45 days after the mailing of the Notice or 60 days after the original mailing date in the case of re-mailing]. The Election Not to Participate in Settlement should state in substance that you :-“I-wish to be excluded from the Class in the *Armstrong v. Prometric* lawsuit and that you understand that by excluding yourself you .I-understand that if I ask to be excluded from the Class,I will not receive a settlement payment from the class settlement in this Action.” Write-You should include your full name, address, and telephone number on the Election Not to Participate in Settlement. Please also include the name and number of the case, which is *Armstrong v. Prometric*, Case No. 20STCV29967. You can only must personally sign and submit the-a Election Not to Participate in Settlement for yourself. No other person may sign or submit an Election Not to Participate in Settlement on your behalf.

The Settlement Administrator's address and telephone number are:

[REDACTED]

[REDACTED]

Elections Not to Participate in Settlement that are postmarked after [45 days after the mailing of the Notice or 60 days after the original mailing date in the case of re-mailing], are incomplete, or are unsigned will be rejected, and Class Members who submit deficient Elections Not to Participate in Settlement will remain bound by the Settlement and the releases described above.

8. How do I tell the Court that I disapprove of the Settlement?

If you have not submitted an Election Not to Participate in Settlement, you can object to any portion the Settlement which you disapprove. You can give reasons why you think the Court should not approve the Settlement, including any of its proposed terms, the attorneys' fees and expenses, or the Class Representative Service Payments. You may object to the Settlement either in writing or in person.

All written objections must be submitted to the Settlement Administrator by [45 days after the mailing of the Notice or 60 days after the original mailing date in the case of re-mailing], and if mailed, must be postmarked or otherwise received by that date. The Settlement Administrator's address is : _____ You also may send written objections to the Settlement Administrator via email at _____, or by fax at _____. Written objections should explain the grounds for each objection and describe why you do not agree with the Settlement. Include your name, current address, and telephone number on your objections. Write the name and number of the lawsuit on all objections or other correspondence: *Armstrong v. Prometric, LLC*, Los Angeles Superior Court Case No. 20STCV29967.

Alternatively, you may appear remotely at the Final Approval Hearing on _____ at _____ to make an oral objection without submitting a written objection. The hearing will take place remotely. To appear at the hearing, you must schedule a remote appearance through LA CourtConnect at <https://www.lacourt.org/lacc/>. Check the Court's website for the most current information. Class Counsel can assist you if you would like to appear at the hearing.

You cannot object to the Settlement if you have excluded yourself from the Settlement. If the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will be mailed a settlement check.

The addresses for Parties' counsel are as follows:

Class Counsel:

Norman Blumenthal
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw
LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
Email: kyle@bamlawca.com
Website: www.bamlawca.com

Counsel for Defendant:

Robin Samuel
Teresa H. Michaud
BAKER & MCKENZIE LLP
1901 Avenue of the Stars, Suite 950
Los Angeles, California 90067
Tel: (310) 201-4728
Email: robin.samuel@bakermckenzie.com
Email: teresa.michaud@bakermckenzie.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at [REDACTED] on [REDACTED], at the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, CA 90012, in Department 17 before Judge Maren E. Nelson. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate, and will consider any properly submitted objections. The Court will determine whether to grant final approval to the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payments to Plaintiffs. This hearing may be rescheduled by the Court without further notice to you. If you are interested in participating the Final Approval Hearing, you should confirm the date, time and location by contacting Class Counsel. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing **remotely using the LA CourtConnect procedure at <https://www.lacourt.org/lacc/>**. If the hearing is continued, notice will be posted on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Armstrong v. Prometric*. In addition, hearing dates are posted on the Internet via the Case Access page for the California Superior Court for the County of Los Angeles (<http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>) and entering the Case No. 20STCV29967.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at [REDACTED] or write to *Armstrong v. Prometric, LLC* Settlement Administrator, c/o [REDACTED].

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service awards, the motion for final approval or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Armstrong v. Prometric*. You may also get more details by examining the Court's file on the Internet via the Case Access page for the California Superior Court for the County of Los Angeles and entering the Case No. 20STCV29967. If you wish to view the Court files in person, you must make an appointment with the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

The Court encourages persons seeking services from the Clerk's Office, court support services, and/or the Self-Help Centers to schedule an appointment. The telephone numbers to schedule appointments for each courthouse are listed at courthouse entrances and are posted on the Court's website, www.lacourt.org.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such event, the Settlement Administrator shall pay all unclaimed funds *cy pres* to to two recognized 501(c)(3) tax-exempt charities as follows: (1) 50% to Bet Tzedek Legal Services and (2) and 50% to Legal Aid at Work, one or more charities as approved by the Court pursuant to California Code of Civil Procedure section 384.

- If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SARAH ARMSTRONG and ROBERT
WALLACE, individuals and on behalf of
themselves and those similarly situated,

Plaintiffs,

v.

PROMETRIC LLC, a Limited Liability
Company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **20STCV29967**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Maren E. Nelson
Dept.: SS-17

Action Filed: August 7, 2020
Trial Date: Not set

PRELIMINARY APPROVAL ORDER

1 This matter, having come before the Honorable _____ of the Superior Court of
2 the State of California, in and for the County of Los Angeles, on _____[DATE], for the
3 motion by Plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) for preliminary approval
4 of the class settlement with Defendant Prometric LLC (“Defendants”). The Court, having
5 considered the briefs, argument of counsel and all matters presented to the Court and good cause
6 appearing, hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of Class Action
7 Settlement.

8
9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the First Amended Class Action Settlement
11 Agreement (“Agreement”) as revised and submitted as Exhibit #1 to the Supplemental Declaration
12 of Kyle Nordrehaug in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action
13 Settlement. The Court finds that the Settlement set forth in the Agreement appears fair, reasonable
14 and adequate, and within the range of possible approval, pursuant to the provisions of California
15 Code of Civil Procedure Section 382 and Rule 3.769 of the California Rules of Court.

16 2. This Order incorporates by reference the definitions in the Agreement, and all
17 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. The Maximum Gross Settlement Amount is Eight Hundred Eighty Thousand
19 Dollars (\$880,000). It appears to the Court on a preliminary basis that the settlement amount and
20 terms are fair, adequate and reasonable as to all potential Class Members when balanced against
21 the probable outcome of further litigation and the significant risks relating to certification, liability
22 and damages issues. It further appears that investigation and research have been conducted such
23 that counsel for the Parties are able to reasonably evaluate their respective positions. It further
24 appears to the Court that settlement at this time will avoid substantial additional costs by all
25 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of
26 the Action. It further appears that the Settlement has been reached as the result of serious and
27 non-collusive, arms-length negotiations. The Court therefore preliminarily finds that the

1 Settlement is fair, adequate, and reasonable when balanced against the probable outcome of
2 further litigation and the significant risks relating to certification, liability, and damages issues.

3 4. The Agreement provides that Class Counsel may seek attorneys' fees in an amount
4 not to exceed one-third of the Maximum Gross Settlement Amount, an award of litigation
5 expenses incurred, in an amount not to exceed \$25,000, and Class Representative Service
6 Payments for each Plaintiff in an amount not to exceed \$10,000, for a combined total of \$20,000.
7 The Court will not approve the amount of attorneys' fees and costs, nor the amount of any service
8 award, until the Final Approval Hearing. Plaintiffs will be required to present evidence supporting
9 these requests, including lodestar, prior to final approval.

10 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
11 certification of a class for settlement purposes only. This stipulation will not be deemed
12 admissible in this or any other proceeding should this Settlement not become final. The Court
13 finds that the prerequisites and considerations of Code of Civil Procedure Section 382 and Rule
14 3.769 of the California Rules of Court appear to be satisfied, and provisionally certifies, for
15 settlement purposes only, the class of all individuals employed by Defendant in California as non-
16 exempt employees at any time during the Class Period, but excluding individuals who released
17 Defendant from wage and hour claims for the Class Period, including those wage and hour claims
18 released as part of a general release of claims. The Class Period is August 7, 2016 to July 3, 2021.

19 6. The Court finds that, for settlement purposes only, the Class meets the
20 requirements for certification under section Code of Civil Procedure Section 382 in that: (a) the
21 Class is ascertainable and so numerous that joinder of all members of the Class is impracticable;
22 (b) common questions of law and fact predominate, and there is a well-defined community of
23 interest amongst the members of the Class with respect to the subject matter of the litigation; (c)
24 the claims of the Plaintiffs are typical of the claims of the members of the Class; (d) the Plaintiffs
25 can fairly and adequately protect the interests of the members of the Class; (e) a class action is
26 superior to other available methods for the efficient resolution of this controversy; and (f) counsel
27
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1 for the Class is qualified to act as counsel for the Class and the Plaintiffs are adequate
2 representatives of the Class.

3 7. The Court finds that the prerequisites and considerations necessary for conditional
4 certification of a collective under 29 U.S.C. Section 216(b) of the Fair Labor Standards Act of
5 1938 are satisfied and conditionally certifies, for settlement purposes only, the collective of all
6 individuals employed by Defendant in California as non-exempt employees at any time during the
7 Class Period, but excluding individuals who released Defendant from wage and hour claims for
8 the Class Period, including those wage and hour claims released as part of a general release of
9 claims. The Collective Period is August 7, 2017 to July 3, 2021.

10 8. The Court finds that the prerequisites and considerations necessary for approval of
11 the settlement of the Released PAGA Claims asserted in the Action, including the settlement and
12 release of the Released PAGA Claims, and the payment of Thirty Thousand Dollars (\$30,000)
13 from the Maximum Gross Settlement Amount to resolve the Released PAGA Claims, appear to be
14 satisfied. The Aggrieved Employees will not have the opportunity to opt out of, or object to the
15 PAGA Payment and settlement and release of the Released PAGA Claims. Upon final approval
16 of the Settlement, the payment to the LWDA and the Aggrieved Employees shall be made in
17 accordance with the Agreement. The PAGA Period is June 3, 2019 to July 3, 2021.

18 9. For settlement purposes only, the Court provisionally appoints Plaintiffs as the
19 representatives of the Class. For settlement purposes only, the Court provisionally appoints
20 Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug
21 Bhowmik De Blouw LLP as Class Counsel for the Class.

22 10. The Court approves the proposed notice plan, including, as to form and content, the
23 revised Notice of Proposed Settlement of PAGA, Class and Collective Action and Hearing Date
24 for Final Court Approval (“Class Notice”), as revised and submitted as Exhibit A to the First
25 Amended Class Action Settlement Agreement. The Court finds that the Class Notice appears to
26 fully and accurately inform the Class of all material elements of the proposed Settlement, of the
27 Class Members’ right to be excluded from the Class by submitting a written opt-out request, and
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1 of each member's right and opportunity to object to the Settlement. The Court further finds that
2 the distribution of the Class Notice substantially in the manner and form set forth in the
3 Agreement and this Order meets the requirements of due process, is the best notice practicable
4 under the circumstances, and shall constitute due and sufficient notice to all persons entitled
5 thereto. The Court orders the mailing of the Class Notice by first class mail in the manner set
6 forth in the Agreement. The Court has been advised that all Class Members speak and read
7 English with ease. If a Class Notice is returned because of an incorrect address, the Settlement
8 Administrator will promptly search for a more current address for the Class Member and re-mail
9 the Class Notice to the Class Member no later than seven (7) business days after the receipt of the
10 undelivered Class Notice.

11 11. The Court hereby appoints _____ as the Settlement Administrator.
12 No later than fourteen (14) calendar days after preliminary approval of the Settlement by the
13 Court, Defendant shall provide to the Settlement Administrator an electronic spreadsheet with the
14 Class Data. The Settlement Administrator will perform address updates and verifications as
15 necessary prior to the mailing of the Class Notice. Using best efforts to mail it as soon as possible,
16 and in no event later than 14 days after receiving the Class information spreadsheet, the Settlement
17 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail.

18 12. The Court hereby preliminarily approves the proposed procedure for exclusion
19 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
20 from the Class as provided in the Class Notice by following the instructions for requesting
21 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
22 postmarked by no later than the Response Deadline, which is forty-five (45) calendar days after
23 the date of the mailing of the Class Notice. If the Class Notice is re-mailed, the Response
24 Deadline will be extended an additional 15 days. An Election Not to Participate in Settlement
25 may also be faxed or emailed to the Settlement Administrator as indicated in the Class Notice.
26 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
27 any recovery under the Settlement and will not be bound by the Settlement or have any right to
28

1 object, appeal or comment thereon. Class Members who have not requested exclusion shall be
2 bound by all determinations of the Court, the Agreement and the Judgment. Each request for
3 exclusion shall apply to only one individual, and any attempt to effect the exclusion or opt out of a
4 group, class, or subclass of individuals is not permitted and will be deemed invalid.

5 13. Any Class Member who has not opted out may appear at the Final Approval
6 Hearing, may object or express the Class Member's views regarding the Settlement, and may
7 present evidence and file briefs or other papers that may be proper and relevant to the issues to be
8 heard and determined by the Court as provided in the Class Notice. Class Members will have
9 until the Response Deadline to submit their written objections to the Settlement Administrator in
10 accordance with the instructions in the Class Notice. If the Class Notice is re-mailed, the
11 Response Deadline will be extended an additional 15 days. Written objections may also be faxed
12 or emailed to the Settlement Administrator as indicated in the Class Notice. Alternatively, Class
13 Members may appear at the Final Approval Hearing to make an oral objection.

14 14. A Final Approval Hearing shall be held before this Court on _____
15 _____ at _____ in Department 17 at the Spring Street Courthouse of the Los
16 Angeles County Superior Court to determine all necessary matters concerning the Settlement,
17 including: whether the proposed settlement of the Action on the terms and conditions provided for
18 in the Agreement is fair, adequate and reasonable and should be finally approved by the Court;
19 whether the Final Approval Order and Judgment should be entered herein; whether the plan of
20 allocation contained in the Agreement should be approved as fair, adequate and reasonable to the
21 Class Members; and whether the attorneys' fees and costs, the service awards, the expenses of the
22 Settlement Administrator, and the PAGA Payment should be approved. All papers in support of
23 the motion for final approval and the motion for attorneys' fees, costs and service awards shall be
24 filed with the Court and served on all counsel no later than sixteen (16) court days before the
25 hearing.

26 15. The Settlement, the Agreement and all exhibits, documents, or instruments related
27 to the Settlement or Agreement shall not be construed as a concession or admission by Defendant
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1 in any way that the asserted claims have any merit or that this Action was properly brought as a
2 class or representative action. The Settlement, the Agreement and all exhibits, documents, or
3 instruments related to the Settlement or Agreement shall not be used as evidence of, or used
4 against Defendant as, an admission or indication in any way, including with respect to any claim
5 of any liability, wrongdoing, fault, or omission by Defendant or with respect to the truth of any
6 allegation asserted by any person. Whether or not the Settlement is finally approved, neither the
7 Settlement, the Agreement, nor any exhibit, document, statement, proceeding or conduct related to
8 the Settlement or Agreement, nor any reports or accounts thereof, shall in any event be construed
9 as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose
10 adverse to the Defendant, including, but not limited to, evidence of a presumption, concession,
11 indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession or
12 damage.

13 16. If the Settlement is not finally approved, or the Effective Date does not occur, or
14 the Settlement is terminated under its terms, then: (a) the Settlement shall be without force and
15 effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable;
16 (b) the Parties shall be deemed to have reverted *nunc pro tunc* to their respective status as of the
17 day immediately before the Parties entered into the Settlement Agreement, with the Parties to meet
18 and confer regarding any discovery or case management deadlines that were pending at the time;
19 (c) Defendant and/or the Released Parties shall not be obligated to pay any amount of the
20 Maximum Gross Settlement Amount and shall be refunded any amounts paid pursuant to the
21 Agreement but not yet spent or disbursed; (d) all Orders entered in connection with the Settlement,
22 including the certification of the Class, shall be vacated without prejudice to any Party's position
23 on the issue of class certification, or any other issue, in this Action or any other action, and the
24 Parties shall be restored to their litigation positions existing on the date of execution of the
25 Agreement; and (e) the Parties shall proceed in all respects as if the Agreement and related
26 documentation and orders had not been executed, and without prejudice in any way from the
27 negotiation or fact of the Settlement or the terms of the Agreement. In such an event, this Court's
28

1 orders regarding the Settlement, including this Order, shall not be used or referred to in litigation,
2 or any arbitration or other civil or administrative proceeding, for any purpose. Nothing in the
3 foregoing paragraph is intended to alter the terms of the Agreement with respect to the effect of
4 the Settlement if it is not approved.

5 17. The Court reserves the right to adjourn or continue the date of the Final Approval
6 Hearing and all dates provided for in the Agreement without further notice to Class Members, and
7 retains jurisdiction to consider all further applications arising out of or connected with the
8 proposed Settlement.

9 18. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
10 further orders of the Court at the Final Approval Hearing.

11 **IT IS SO ORDERED.**

12
13 Dated: _____

HON. MAREN E. NELSON
JUDGE, SUPERIOR COURT OF CALIFORNIA

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SARAH ARMSTRONG and ROBERT
WALLACE, individuals and on behalf of
themselves and those similarly situated,

Plaintiffs,

v.

PROMETRIC LLC, a Limited Liability
Company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **20STCV29967**

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Maren E. Nelson
Dept.: SS-17

Action Filed: August 7, 2020
Trial Date: Not set

FINAL APPROVAL ORDER AND JUDGMENT

1 The motion of Plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) for an order
2 finally approving the First Amended Class Action Settlement Agreement (“Agreement”) with
3 Defendant Prometric LLC (“Defendant”), attorneys’ fees and costs, service payments, and the fees
4 and expenses of the Settlement Administrator duly came on for hearing on _____
5 before the Honorable _____.

6
7 **I.**
8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

11 1. This Order hereby adopts and incorporates by reference the definitions, terms and
12 conditions of the Agreement.

13 2. This Court has jurisdiction over the subject matter of this litigation pending before
14 the Superior Court for the State of California, County of Los Angeles, and over all Parties to this
15 litigation, including the Class.

16 3. For the reasons set forth in the Preliminary Approval Order, which are adopted and
17 incorporated herein by reference, this Court finds that the requirements of California Code of Civil
18 Procedure section 382 and rule 3.769 of the California Rules of Court have been satisfied.

19 4. Based on a review of the evidence submitted in support of the motion and the
20 applicable law, the Court finds that the Settlement on the terms set forth in the Agreement is fair,
21 reasonable, and adequate.

22 5. The Court further finds that the Settlement is the result of arm’s length negotiations
23 that were conducted after Class Counsel had adequately investigated and made themselves
24 familiar with the claims and defenses in this Action, including the strengths and weaknesses of
25 those claims and defenses. In particular, the amount the Settlement, the significant risks relating
26 to certification, liability, and damages issues, and the assistance of an experienced mediator in the
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1 settlement process, among other factors, support the Court’s conclusion that the Settlement is fair,
2 reasonable, and adequate.

3 **Preliminary Approval of the Settlement**

4 6. On _____, the Court granted preliminary approval of the Settlement
5 (“Preliminary Approval Order”). At this same time, the Court approved conditional certification
6 of the Class and the Collective Members for settlement purposes only.

7 **Notice to the Class**

8 7. In compliance with Rule 3.769(f) of the California Rules of Court and the
9 Preliminary Approval Order, on or about _____, the Settlement Administrator
10 delivered the Court-approved Class Notice to the Class by first class U.S. mail using each Class
11 Member’s last known mailing address. The Court finds that delivery of the Class Notice to the
12 Class in this manner was the best notice practicable under the circumstances, and was reasonably
13 calculated to communicate actual notice of the litigation and the proposed settlement to the Class.
14 The Class Notice: (i) fully and accurately informed the Class of all material elements of the
15 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
16 from the Settlement; (ii) constituted valid, due, and sufficient notice to all Class Members and
17 Collective Members; and (iii) fully satisfied and complied with the requirements of notice and due
18 process under California and federal statutory and constitutional law. The Class Notice fairly and
19 adequately described the Settlement and provided Class Members with sufficient information
20 about and notice of their rights and options with respect to the Settlement, provided an explanation
21 of the proposed settlement terms and procedures for Class Members to follow in filing written
22 objections to it and in arranging to appear at the Final Approval Hearing and state any objections
23 to the proposed Settlement, and included notice of a variety of means by which Class Members
24 could obtain additional information.

25 8. The Response Deadline for opting out of the Class or submitting written objections
26 to the Settlement was _____, which deadline was extended by 15 days for any Class
27 Member whose Class Notice was re-mailed to them. There was sufficient time between the
28

1 mailing of the Class Notice and the Response Deadline to permit Class Members to decide
2 whether to opt out of, object to, or participate in the Settlement, and to act on their decision. A
3 full opportunity has been afforded to the Class Members to participate in this hearing, and all
4 Class Members and other persons wishing to be heard have been heard. Class Members also have
5 had a full and fair opportunity to exclude themselves from the proposed Settlement and Class.
6 Accordingly, the Court determines that all Class Members who did not timely and properly submit
7 an Election Not to Participate in Settlement are bound by the Settlement and this Final Approval
8 Order and Judgment.

9 **Fairness of Settlement**

10 9. The Court has considered all relevant factors for determining the fairness of the
11 Settlement and has concluded that all such factors weigh in favor of granting final approval. In
12 particular:

13 (a) The Agreement is entitled to a presumption of fairness. *Dunk v. Ford*
14 *Motor Co.* 48 Cal. App. 4th 1794, 1801 (1996).

15 (b) The settlement was reached through arm's-length bargaining between the
16 parties during an all-day mediation before David Rotman, a respected and experienced mediator of
17 wage and hour class actions. There has been no collusion between the parties in reaching the
18 proposed settlement.

19 (c) Plaintiffs' investigation and discovery have been sufficient to allow the
20 Court and counsel to act intelligently.

21 (d) Counsel for both parties are experienced in similar employment class action
22 litigation. All counsel recommended approval of the Agreement.

23 (e) The percentage of objectors and requests for exclusion is small. ____
24 objections were received. _____ requests for exclusion were received.

25 (f) The participation rate was high. _____ Class Members will be mailed a
26 settlement payment, representing _____ % of the overall Class.

1 10. The consideration to be given to the Class Members under the terms of the
2 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
3 and defenses asserted in this action and is fair, reasonable and adequate compensation for the
4 release of Class Members' claims, the Collective Members' claims, and the Aggrieved
5 Employees' claims, given the uncertainties and significant risks of the litigation and the delays
6 which would ensue from continued prosecution of the action.

7 11. Accordingly, the Court hereby approves the Settlement as set forth in the
8 Agreement and expressly finds that the Settlement is, in all respects, fair, reasonable, adequate,
9 and in the best interests of the Participating Class Members and Participating Collective Members,
10 and the Court hereby directs implementation of all remaining terms, conditions, and provisions of
11 the Agreement. The Court also finds that settlement now will avoid additional and potentially
12 substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the
13 case. Additionally, after considering the monetary recovery provided by the Settlement in light of
14 the challenges posed by continued litigation, the Court concludes that the Settlement provides the
15 Participating Class Members and Participating Collective Members with fair and adequate relief.

16 **Attorneys' Fees and Costs**

17 12. An award of \$_____ for attorneys' fees, representing [percentage] of the
18 Maximum Gross Settlement Amount, and \$_____ for litigation costs and expenses, is
19 reasonable, in light of the contingent nature of Class Counsel's fee, the hours worked by Class
20 Counsel, and the results achieved by Class Counsel. The requested award has been supported by
21 Class Counsel's lodestar calculations and billing statements.

22 **Class Representative Service Payment**

23 13. The Agreement provides for Class Representative Service Payments of not more
24 than \$10,000 to each of the Plaintiffs, for a combined total of \$20,000, subject to the Court's
25 approval. The Court finds that a Class Representative Service Payment in the amount of \$_____
26 _____ to each of the Plaintiffs is reasonable in light of the risks and burdens undertaken
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1 by the Plaintiffs in the litigation, for the time and effort in bringing and prosecuting this matter on
2 behalf of the Class, and for the execution of a general release of claims.

3 **Settlement Administration Expenses**

4 14. The Settlement Administrator shall calculate and administer the payments to be
5 made to the Class Members and Collective Members, transmit payment for attorneys' fees and
6 costs to Class Counsel, transmit the Class Representative Service Payments to the Plaintiffs,
7 distribute the PAGA Payment, issue any required tax reporting forms, calculate withholdings and
8 perform the other remaining duties set forth in the Agreement. The Settlement Administrator has
9 documented \$ _____ in fees and expenses, and this amount is reasonable in light of the work
10 performed by the Settlement Administrator.

11 **PAGA Payment**

12 15. The Agreement provides for a PAGA Payment out of the Maximum Gross
13 Settlement Amount of \$30,000, of which \$22,500 shall be allocated to the California Labor &
14 Workforce Development Agency ("LWDA") for the LWDA's 75% share of the settlement of civil
15 penalties paid pursuant to the PAGA and \$7,500 shall be allocated and distributed to the
16 Aggrieved Employees based on their respective Workdays during the PAGA Period. The Court
17 finds this PAGA Payment to be reasonable. All Aggrieved Employees will be sent their share of
18 the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth
19 below, whether or not they opt out of the Settlement. The LWDA was provided notice of the
20 Settlement and a copy of the Agreement and its settlement terms, and has not objected to the
21 proposed Settlement. The Court approves the settlement and release of the PAGA claims for the
22 PAGA Payment.

23
24 **II.**

25 **ORDERS**

26 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:
27
28

1 1. The Class and Collective are certified for purposes of settlement. The Class is
2 defined as follows:

3 All individuals employed by Defendant in California as non-exempt employees at
4 any time during the Class Period of August 7, 2016 to July 3, 2021, but excluding
5 individuals who released Defendant from wage and hour claims for the Class
6 Period, including those wage and hour claims released as part of a general release
7 of claims.

8 The “Collective Members” are defined as:

9 All individuals employed by Defendant in California as non-exempt employees at
10 any time during the Collective Period of August 7, 2017 to July 3, 2021, but
11 excluding individuals who released Defendant from FLSA claims for the Collective
12 Period, including those wage and hour claims released as part of a general release
13 of claims.

14 2. All persons who meet the foregoing Class definition are members of the Class,
15 except for the following individuals who submitted a valid and timely Election Not to Participate
16 in Settlement: [INSERT NAMES OF OPT OUTS].

17 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
18 best interest of the Class and the Collective Members.

19 4. Class Counsel are awarded attorneys’ fees in the amount of \$_____ and
20 costs in the amount of \$_____. Class Counsel shall not seek or obtain any other
21 compensation or reimbursement from Defendant, Plaintiffs or members of the Class.

22 5. The payment of the Class Representative Service Payments in the amount of \$
23 _____ to each of the Plaintiffs is approved.

24 6. The payment of \$_____ to the Settlement Administrator for its fees and
25 expenses is approved.

26 7. The PAGA Payment of \$30,000 is approved and shall be allocated in accordance
27 with the Agreement.

28 8. The Agreement and this Settlement are not an admission by Defendant, and this
Final Approval Order and Judgment is not a finding, of the validity of any claims asserted in the
Action, of any wrongdoing by Defendant, or that any of the claims asserted in this Action are

1 appropriate for class treatment, other than for settlement purposes. Neither this Final Approval
2 Order and Judgment, the Agreement, nor any document referred to herein, nor any action taken to
3 carry out the Agreement is, may be construed as, or may be used as an admission by or against
4 Defendant of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of
5 the Agreement, and any negotiations or proceedings related thereto, shall not in any event be
6 construed as, or deemed to be evidence of, an admission or concession with regard to the denials
7 or defenses by Defendant. Notwithstanding these restrictions, Defendant may file in the Action or
8 in any other proceeding this Final Approval Order and Judgment, the Agreement, or any other
9 papers and records on file in the Action as evidence of the Settlement to support a defense of res
10 judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense
11 as to the Released Class Claims.

12 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
13 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
14 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
15 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
16 to individual Class Members.

17 10. If the Agreement does not become final and effective in accordance with the terms
18 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
19 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
20 revert to their respective positions as of before entering into the Agreement, and expressly reserve
21 their respective rights regarding the prosecution and defense of this Action, including all available
22 defenses and affirmative defenses, and arguments that any claim in the Action could not be
23 certified as a class action and/or managed as a representative action.

24 Plaintiffs shall file and serve a report/declaration summarizing all distributions made
25 pursuant to the approved Settlement on or before _____.

26 12. The Court sets an OSC re Compliance with the terms of the Settlement for
27 _____.

1 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

2 1. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court hereby enters
3 judgment consistent with and as expressly set forth in the terms of the Settlement, as modified by
4 the Final Approval Order.

5 2. Except as set forth in the Agreement and this Final Approval Order and Judgment,
6 Plaintiffs, and all members of the Class, shall take nothing in the Action.

7 3. Without affecting the finality of this Judgment, and pursuant to California Code of
8 Civil Procedure section 664.6, the Court shall retain jurisdiction to construe, interpret, implement
9 and enforce the Agreement, to hear and resolve any contested challenge to a claim for settlement
10 benefits, and to supervise and adjudicate any dispute arising from or in connection with the
11 distribution of settlement benefits.

12 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
13 provided in the Agreement and in this Final Approval Order and Judgment.

14 5. As of the date Defendant fully funds the Maximum Gross Settlement Amount, each
15 "Participating Class Member" shall expressly and irrevocably release, acquit, and forever
16 discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all
17 "Released Class Claims" against the "Released Parties."

18 6. As used in paragraph 4 above, the quoted terms have the meanings set forth below:

19 (a) "Participating Class Member" means a Class Member who does not submit
20 a valid and timely Election Not to Participate in Settlement.

21 (b) "Released Class Claims" means any and all claims, debts, liabilities,
22 demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys'
23 fees, damages, liquidated damages, actions or causes of action of whatever kind or nature, whether
24 known or unknown, contingent or accrued, against the Released Parties that accrued during the
25 Class Period for Class Members, including but not limited to Collective Members, and that arise
26 out of or relate to the allegations asserted in the First Amended Complaint, that are asserted in the
27 First Amended Complaint, or that could have been asserted in the First Amended Complaint based
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1 on the allegations in the First Amended Complaint, whether in contract or based on putative
2 violations of any federal, state, city, or local law. The Released Class Claims include all claims
3 arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum
4 wages, overtime, double time, or premium pay of any other kind, meal period violations, rest
5 break violations, wage statement violations, the failure to keep accurate payroll records, suitable
6 seating violations, the failure to timely pay wages during employment and upon termination of
7 employment, the failure to reimburse employees for business expenses, all related claims for civil
8 and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, all
9 claims under PAGA that could have been premised on the Released Class Claims, all claims under
10 the California Business & Professions Code section 17200 *et seq.* that could have been premised
11 on the Released Class Claims, all claims under the Fair Labor Standards Act, the California Labor
12 Code, the applicable IWC Wage Orders, and any other federal, state, city, or local law regarding
13 wages and hours, including any and all claims arising from the factual allegations in ~~all complaints~~
14 ~~filed in the Action~~ the First Amended Complaint that the Class Members and Participating
15 Collective Members do not know or suspect to exist in their favor, which if known by them, would
16 have materially affected the Settlement and the release of the Released Parties. The Released
17 Class Claims exclude all other claims, including claims for vested benefits other than wages,
18 wrongful termination, unemployment insurance, disability, social security, workers'
19 compensation, and class claims outside of the Class Period, and PAGA claims outside of the
20 PAGA Period.

21 (c) "Released Parties" means Defendant and its current or past predecessors,
22 successors, affiliates, subsidiaries, parent companies, divisions, current and past employees,
23 insurers, agents, consultants, legal representatives, and any other related entities, and all of their
24 past, present and future officers, shareholders, owners, members, directors, partners, agents,
25 managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest,
26 and underwriters.

1 7. As of the date Defendant fully funds the Maximum Gross Settlement Amount, each
2 “Participating Collective Member” shall expressly and irrevocably release, acquit, and forever
3 discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all
4 “Released FLSA Claims” against the Released Parties. The settlement check to the Participating
5 Collective Members shall contain, on the back of the check, the following language: “By
6 endorsing, negotiating, or cashing this check, I affirmatively consent to join and opt into the
7 Armstrong, et al. v. Prometric, LLC lawsuit pursuant to 29 U.S. Code Section 216(b) for the
8 purpose of becoming a party and releasing all claims against the Released Parties under the Fair
9 Labor Standards Act that arise out of or relate to the Released Class Claims during the Collective
10 Period.”

11 8. As used in paragraph 6 above, the quoted terms have the meanings set forth below:

12 (a) “Participating Collective Members” means all Collective Members who
13 timely sign, cash, deposit or otherwise negotiate a settlement check.

14 (b) “Released FLSA Claims” means any and all claims, debts, liabilities,
15 demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys’
16 fees, damages, liquidated damages, actions or causes of action of whatever kind or nature, whether
17 known or unknown, contingent or accrued, against the Released Parties that accrued during the
18 Collective Period, and that arise out of or relate to the allegations asserted in the First Amended
19 Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in
20 the First Amended Complaint based on the allegations in the First Amended Complaint, whether
21 in contract or based on putative violations of the Fair Labor Standards Act or its interpreting
22 regulations. The Released FLSA Claims include all claims arising from the factual allegations in
23 the First Amended Complaint for unpaid wages, minimum wages, overtime, or premium pay of
24 any other kind, the failure to keep accurate payroll records, the failure to timely pay wages during
25 employment and upon termination of employment, and all related claims for civil and statutory
26 penalties, interest, liquidated damages, attorneys’ fees, costs, and expenses, including any and all
27 claims arising from the factual allegations in ~~all complaints filed in the Action~~ the First Amended

1 Complaint that the Participating Collective Members do not know or suspect to exist in their
2 favor, which if known by them, would have materially affected the Settlement and the release of
3 the Released Parties.

4 9. As of the date Defendant fully funds the Maximum Gross Settlement Amount, the
5 “Aggrieved Employees,” on their own behalf, on behalf of their heirs, assigns and estates, and in
6 their representative capacities on behalf of the State of California, shall expressly and irrevocably
7 release, acquit, and forever discharge, any and all “Released PAGA Claims” against the Released
8 Parties. The release and extinguishment of the Released PAGA Claims shall be effective and
9 binding on all Aggrieved Employees, including Aggrieved Employees who are Non-Participating
10 Class Members.

11 10. As used in paragraph 8 above, the quoted terms have the meanings set forth below:

12 (a) “Aggrieved Employees” means all individuals ~~who worked for~~ employed
13 by Defendant in California as non-exempt employees at any time during the PAGA Period, but
14 excluding individuals who released Defendant from wage and hour claims for the Class Period,
15 including those wage and hour claims released as part of a general release of claims.

16 (b) “Released PAGA Claims” means any and all any and all claims under the
17 PAGA that were asserted or alleged in Plaintiffs’ letters to the LWDA and the First Amended
18 Complaint or that reasonably relate to factual allegations in Plaintiffs’ letters to the LWDA or the
19 First Amended Complaint, that arise out of or relate to the Released Class Claims and that accrued
20 during the PAGA Period, including all claims for penalties, interest, attorneys’ fees, costs and
21 expenses, and other remedies available under PAGA.

22 11. As of the date Defendant fully funds the Maximum Gross Settlement Amount, in
23 addition to the waiver and release of Released Class Claims, Released FLSA Claims and Released
24 PAGA Claims, as set forth above, and in consideration for the Class Representative Service
25 Payments, each Plaintiff, on behalf of themselves and on behalf of each of their heirs, executors,
26 administrators, successors and assigns, shall expressly and irrevocably release, acquit, and forever
27 discharge the Released Parties of and from any actions, causes of action, suits, debts, dues, sums
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1 of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies,
2 agreements, promises, judgments, obligations, union grievances, claims, charges, complaints,
3 appeals and demands whatsoever, in law or equity, which they may have against Released Parties,
4 from the beginning of time through July 3, 2021, whether known or unknown, asserted or
5 unasserted, including, but not limited to, any alleged violation of: Title VII of the Civil Rights Act
6 of 1964, 42 U.S.C. § 2000e *et seq.*; the Civil Rights Act of 1991, Pub. L. No. 102-166, Sections
7 1981 through 1988 of Title 42 of the United States Code, 42 U.S.C. §§ 1981-1988; the Fair Labor
8 Standards Act of 1938, 29 U.S.C. § 201 *et seq.*; the Occupational Safety and Health Act of 1970,
9 29 U.S.C. § 651 *et seq.*; the Immigration Reform and Control Act, as amended; the Workers
10 Adjustment Retraining Notification Act, as amended; the Family and Medical Leave Act; the
11 California Fair Employment and Housing Act; the California Family Rights Act; the California
12 Labor Code; the California Industrial Wage Commission Wage Orders, any other federal, state,
13 city, or local human rights, civil rights, wage and hour, wage payment, pension, employee
14 benefits, labor or other laws, rules, regulations and/or guidelines, constitutions or ordinances; any
15 contract (whether oral or written, express or implied) or tort laws; any claim arising under the
16 common law; any other claim for unpaid wages, employment discrimination, retaliation, wrongful
17 termination, constructive discharge, pain and suffering, mental anguish, intentional and/or
18 negligent infliction of emotional distress; any claim for costs, fees, or other expenses, including
19 attorneys' fees or any other action against Released Parties, based upon any conduct occurring up
20 to and including July 3, 2021.

21 12. As of the date Defendant fully funds the Maximum Gross Settlement Amount, each
22 Participating Class Member, Participating Collective Member, and Aggrieved Employee shall be
23 and hereby is forever barred and enjoined from prosecuting the Released Class Claims, the
24 Released FLSA Claims, and the Released PAGA Claims set forth in the Agreement against
25 Defendant and/or the Released Parties, and every such released claim as set forth above of each
26 and every Participating Class Member, Participating Collective Member and Aggrieved Employee
27 is and shall be deemed to be conclusively released and discharged as against the Defendant and the
28

1 Released Parties. All Participating Class Members, Participating Collective Members and
2 Aggrieved Employees are forever barred from pursuing, or seeking to reopen, any of the Released
3 Class Claims, the Released Collective Claims, and the Released PAGA Claims.

4 13. Class Counsel shall post a copy of this Judgment for thirty (30) calendar days on its
5 website in compliance with Rule 3.771(b) of the California Rules of Court in order to provide
6 notice to the Class Members of this Judgment.

7 14. This document shall constitute a judgment (and separate document constituting said
8 judgment) for purposes of California Rules of Court, Rule 3.769(h).

9 15. This Judgment is intended to be a final disposition of the above-entitled action in
10 its entirety, and it is intended to be immediately appealable.

11 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

12
13 Dated: _____

14 _____
15 HON. MAREN E. NELSON
16 JUDGE, SUPERIOR COURT OF CALIFORNIA
17
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26
27
28

EXHIBIT #3

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

May 7, 2020

CA2140

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Prometric LLC

Online Filing

Certified Mail #70192280000075854701

United Agent Group Inc.

4640 Admiralty Way, 5th Floor

Marina del Rey, CA 90292

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Prometric LLC in California and classified as non-exempt employees during the time period of May 7, 2019 until a date as determined by the Court. Our offices represent Plaintiff Sarah Armstrong (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Prometric LLC (“Defendant”). Plaintiff has been employed by Defendant in California since December of 2018 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a

single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State Bar #205975)

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6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

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10 Website: www.bamlawca.com

11 Attorneys for Plaintiff

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 SARAH ARMSTRONG, an individual, on
15 behalf of herself and on behalf of all
16 persons similarly situated,

17 Plaintiff,

18 vs.

19 PROMETRIC LLC, a Limited Liability
20 Company, and DOES 1 through 50,
21 inclusive,

22 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

1 Plaintiff Sarah Armstrong (“PLAINTIFF”) an individual, on behalf of herself and all other
2 similarly situated current and former employees alleges on information and belief, except for her
3 own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant Prometric LLC (“DEFENDANT”) is a limited liability company that at
7 all relevant times mentioned herein conducted and continues to conduct substantial business in
8 the state of California.

9 2. DEFENDANT, also known as Prometric Testing, is a U.S.-based company in the test
10 administration industry. Its corporate headquarters is located in Canton (Baltimore, Maryland)
11 in the United States

12 3. PLAINTIFF has been employed by DEFENDANT since December of 2018 and has
13 been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis,
14 and entitled to the legally required meal and rest periods and payment of minimum and overtime
15 wages due for all time worked.

16 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
17 defined as all individuals who are or previously were employed by DEFENDANT in California and
18 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
19 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
20 by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate
21 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice which
25 failed to lawfully compensate these employees. DEFENDANT’s uniform policy and practice
26 alleged herein is an unlawful, unfair and deceptive business practice whereby DEFENDANT
27 retained and continues to retain wages due PLAINTIFF and the other members of the
28 CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an

1 injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF
2 and the other members of the CALIFORNIA CLASS who have been economically injured by
3 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
4 relief.

5 6. The true names and capacities, whether individual, corporate, subsidiary,
6 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
7 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
8 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the
9 true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF
10 is informed and believes, and based upon that information and belief alleges, that the Defendants
11 named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some
12 manner for one or more of the events and happenings that proximately caused the injuries and
13 damages hereinafter alleged.

14 7. The agents, servants and/or employees of the Defendants and each of them acting
15 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
16 agent, servant and/or employee of the Defendants, and personally participated in the conduct
17 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
18 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
19 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
20 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
21 Defendants' agents, servants and/or employees.

22 23 **THE CONDUCT**

24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
28 and CALIFORNIA CLASS Members to work without paying them for all the time they are under

1 DEFENDANT's control. DEFENDANT requires PLAINTIFF and the CALIFORNIA CLASS
2 Members to work off the clock without paying them for all the time they performed post-shift
3 duties, specifically by failing to provide enough labor hours to accomplish all the job tasks that
4 DEFENDANT expected PLAINTIFF and CALIFORNIA CLASS Members to complete on a daily
5 and/or weekly basis. Specifically, DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS
6 members to clock out of DEFENDANT's timekeeping system and then set the alarm for the
7 location these employees were working at. DEFENDANT fails to pay PLAINTIFF and
8 CALIFORNIA CLASS Members for the time they spend working after they have already clocked
9 out of DEFENDANT's timekeeping system at the end of their work shifts. Additionally, from
10 time to time, DEFENDANT requires PLAINTIFF to work while clocked out during what is
11 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted
12 by work assignments. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit
13 minimum wage and overtime compensation by from time to time working without their time being
14 accurately recorded and without compensation at the applicable minimum wage and overtime
15 rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
16 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
17 records.

18 9. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
19 CLASS Members are also from time to time unable to take off duty meal breaks and are not fully
20 relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS Members are
21 from time to time required to perform work as ordered by DEFENDANT for more than five (5)
22 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT fails to
23 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period from
24 time to time in which these employees are required by DEFENDANT to work ten (10) hours of
25 work from time to time. PLAINTIFF and the other CALIFORNIA CLASS Members therefore
26 forfeit meal breaks without additional compensation and in accordance with DEFENDANT's
27 corporate policy and practice.

28 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA

1 CLASS Members are also required from time to time to work in excess of four (4) hours without
2 being provided ten (10) minute rest periods. Further, these employees are denied their first rest
3 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
4 from time to time, a first and second rest period of at least ten (10) minutes for some shifts
5 worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest
6 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time
7 to time. PLAINTIFF and other CALIFORNIA CLASS Members are also not provided with one
8 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
9 CALIFORNIA CLASS Members are from time to time denied their proper rest periods by
10 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage Order
11 requires employers to provide employees with off-duty rest periods, which the California
12 Supreme Court defined as time during which an employee is relieved from all work related duties
13 and free from employer control. In so doing, the Court held that the requirement under California
14 law that employers authorize and permit all employees to take rest period means that employers
15 must relieve employees of all duties and relinquish control over how employees spend their time
16 which includes control over the locations where employees may take their rest period.
17 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
18 minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and other
19 CALIFORNIA CLASS Members from unconstrained walks and requires these employees to
20 remain on DEFENDANT's premises under DEFENDANT's control during what should be their
21 paid, off duty rest periods.

22 11. DEFENDANT also fails to provide PLAINTIFF and the other members of the
23 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among
24 other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
25 employer shall furnish each of his or her employees with an accurate itemized wage statement
26 in writing showing, among other things, gross wages earned and all applicable hourly rates in
27 effect during the pay period and the corresponding amount of time worked at each hourly rate.
28 Aside, from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an itemized

1 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
2 DEFENDANT from time to time provided PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

4 12. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
5 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
6 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of
7 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802,
8 employers are required to indemnify employees for all expenses incurred in the course and scope
9 of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify
10 his or her employee for all necessary expenditures or losses incurred by the employee in direct
11 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
12 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
13 believed them to be unlawful."

14 13. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
15 Members as a business expense, are required by DEFENDANT to use their own personal cellular
16 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but
17 are not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their
18 personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other
19 CALIFORNIA CLASS Members are required by DEFENDANT to use their personal cellular
20 phones to respond to managers while off the clock (which also results in minimum wage and
21 overtime violations) and DEFENDANT requires PLAINTIFF and other CALIFORNIA CLASS
22 Members to download a scheduling application on their personal cell phone called "When I
23 Work.". As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other
24 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included,
25 but were not limited to, costs related to the use of their personal cellular phones all on behalf of
26 and for the benefit of DEFENDANT.

27 14. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a

1 matter of company policy, practice and procedure, intentionally, knowingly and systematically
2 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed
3 meal and rest periods. This uniform policy and practice of DEFENDANT is intended to
4 purposefully avoid the payment for all time worked as required by California law which allows
5 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied with
6 the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
7 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

8 15. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
9 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
10 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by
11 engaging in a company-wide policy and procedure which fails to accurately calculate and record
12 all missed meal and rest periods and failed to pay all minimum and overtime wages due to
13 PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of these
14 employees’ missed meal and rest breaks is the DEFENDANT’s burden. As a result of
15 DEFENDANT’s intentional disregard of the obligation to meet this burden, DEFENDANT fails
16 to properly calculate and/or pay all required compensation for work performed by the members
17 of the CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
18 thereunder as herein alleged.

19 16. Specifically as to PLAINTIFF, DEFENDANT fails to provide all the legally
20 required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor
21 Code and failed to pay him all minimum and overtime wages due to her. DEFENDANT does not
22 have a policy or practice which provides timely off-duty meal and rest breaks to PLAINTIFF and
23 also fails to compensate PLAINTIFF for her missed meal and rest breaks. The nature of the work
24 performed by the PLAINTIFF does not prevent her from being relieved of all of her duties for the
25 legally required off-duty meal periods. As a result, DEFENDANT’s failure to provide PLAINTIFF
26 with the legally required meal periods is evidenced by DEFENDANT’s business records.
27 DEFENDANT also requires PLAINTIFF to work off the clock without paying her for all the time
28 she is working for DEFENDANT and performing post-shift duties, specifically by failing to

1 provide enough labor hours to accomplish all the job tasks that DEFENDANT expects PLAINTIFF
2 to complete on a daily and/or weekly basis. As a result of DEFENDANT not accurately recording
3 all missed meal and rest periods and/or minimum and overtime wages due, the wage statements
4 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
5 Section 226(a). The amount in controversy for PLAINTIFF individually does not exceed the sum
6 or value of \$75,000.

7 8 **JURISDICTION AND VENUE**

9 17. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
11 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
12 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

13 18. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
15 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
16 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
17 committed the wrongful conduct herein alleged in this County against members of the
18 CALIFORNIA CLASS.

19 20 **THE CALIFORNIA CLASS**

21 19. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
22 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
23 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
24 individuals who are or previously were employed by DEFENDANT in California and classified
25 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
26 four (4) years prior to the filing of this Complaint and ending on the date as determined by the
27 Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate
28 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

1 20. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
2 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

3 21. DEFENDANT, as a matter of company policy, practice and procedure, and in
4 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
5 requirements, and the applicable provisions of California law, intentionally, knowingly, and
6 wilfully, engages in a practice whereby DEFENDANT systematically fails to record all meal and
7 rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
8 DEFENDANT enjoys the benefit of this work, requires employees to perform this work and
9 permits or suffers to permit this work.

10 22. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
11 CLASS Member was paid accurately for all meal and rest breaks missed as required by California
12 laws. The DEFENDANT, however, as a matter of uniform and systematic policy and procedure
13 failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place
14 a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as
15 required by law. This common business practice is applicable to each and every CALIFORNIA
16 CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive
17 under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages,
18 and reliance are not elements of this claim.

19 23. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
20 Members is impracticable.

21 24. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
22 California law by:

- 23 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
24 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
25 deceptively having in place company policies, practices and procedures that
26 uniformly and systematically failed to record and pay PLAINTIFF and the
27 other members of the CALIFORNIA CLASS for all time worked minimum
28 wages owed and overtime wages owed for work performed by these

employees;

- (b) Committing an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods; and,
- (c) Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties.

25. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, is classified as a non-exempt employee paid on an hourly basis who has been subjected to the DEFENDANT's deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct

engaged in by DEFENDANT; and,

- (d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

26. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- (a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

- (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the

CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

27. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- 1 (c) The members of the CALIFORNIA CLASS are so numerous that it is
2 impractical to bring all members of the CALIFORNIA CLASS before the
3 Court;
- 4 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able
5 to obtain effective and economic legal redress unless the action is
6 maintained as a Class Action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the acts of unfair competition, statutory violations and
9 other improprieties, and in obtaining adequate compensation for the
10 damages and injuries which DEFENDANT's actions have inflicted upon the
11 CALIFORNIA CLASS;
- 12 (f) There is a community of interest in ensuring that the combined assets of
13 DEFENDANT are sufficient to adequately compensate the members of the
14 CALIFORNIA CLASS for the injuries sustained;
- 15 (g) DEFENDANT has acted or refused to act on grounds generally applicable
16 to the CALIFORNIA CLASS, thereby making final class-wide relief
17 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 18 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
19 the business records of DEFENDANT; and,
- 20 (i) Class treatment provides manageable judicial treatment calculated to bring
21 a efficient and rapid conclusion to all litigation of all wage and hour related
22 claims arising out of the conduct of DEFENDANT as to the members of the
23 CALIFORNIA CLASS.

24 28. DEFENDANT maintains records from which the Court can ascertain and identify
25 by job title each of DEFENDANT's employees who as have been systematically, intentionally and
26 uniformly subjected to DEFENDANT's company policy, practices and procedures as herein
27 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
28 of similarly situated employees when they have been identified.

THE CALIFORNIA LABOR SUB-CLASS

29. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

30. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engages in a practice whereby DEFENDANT fails to correctly calculate compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoys the benefit of this work, requires employees to perform this work and permits or suffers to permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

31. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT’s employees who have been systematically, intentionally and uniformly subjected to DEFENDANT’s company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

32. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable.

1 33. Common questions of law and fact exist as to members of the CALIFORNIA
2 LABOR SUB-CLASS, including, but not limited, to the following:

- 3 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
4 compensation due to members of the CALIFORNIA LABOR SUB-CLASS
5 for missed meal and rest breaks in violation of the California Labor Code
6 and California regulations and the applicable California Wage Order;
- 7 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
9 wage statements;
- 10 (c) Whether DEFENDANT has engaged in unfair competition by the
11 above-listed conduct;
- 12 (d) The proper measure of damages and penalties owed to the members of the
13 CALIFORNIA LABOR SUB-CLASS; and,
- 14 (e) Whether DEFENDANT's conduct was willful.

15 34. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
16 California law by:

- 17 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
18 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
19 all wages due for overtime worked, for which DEFENDANT is liable
20 pursuant to Cal. Lab. Code § 1194;
- 21 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
22 accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR
23 SUB-CLASS the correct minimum wage pay for which DEFENDANT is
24 liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 25 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
26 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
27 itemized statement in writing showing the corresponding correct amount
28 of wages earned by the employee; and,

- 1 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
4 meal breaks and the legally required off-duty rest breaks;
- 5 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
6 the CALIFORNIA LABOR SUB-CLASS members with necessary expenses
7 incurred in the discharge of their job duties.

8 35. This Class Action meets the statutory prerequisites for the maintenance of a Class
9 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 10 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
11 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
12 Members is impracticable and the disposition of their claims as a class will
13 benefit the parties and the Court;
- 14 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
15 that are raised in this Complaint are common to the CALIFORNIA LABOR
16 SUB-CLASS and will apply uniformly to every member of the
17 CALIFORNIA LABOR SUB-CLASS;
- 18 (c) The claims of the representative PLAINTIFF are typical of the claims of
19 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like
20 all the other members of the CALIFORNIA LABOR SUB-CLASS, is a non-
21 exempt employee paid on an hourly basis who has been subjected to the
22 DEFENDANT's practice and policy which fails to pay the correct amount
23 of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF
24 sustained economic injury as a result of DEFENDANT's employment
25 practices. PLAINTIFF and the members of the CALIFORNIA LABOR
26 SUB-CLASS were and are similarly or identically harmed by the same
27 unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in
28 by DEFENDANT; and,

1 (d) The representative PLAINTIFF will fairly and adequately represent and
2 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
3 retained counsel who are competent and experienced in Class Action
4 litigation. There are no material conflicts between the claims of the
5 representative PLAINTIFF and the members of the CALIFORNIA LABOR
6 SUB-CLASS that would make class certification inappropriate. Counsel for
7 the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims
8 of all CALIFORNIA LABOR SUB-CLASS Members.

9 36. In addition to meeting the statutory prerequisites to a Class Action, this action is
10 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

11 (a) Without class certification and determination of declaratory, injunctive,
12 statutory and other legal questions within the class format, prosecution of
13 separate actions by individual members of the CALIFORNIA LABOR SUB-
14 CLASS will create the risk of:

15 1) Inconsistent or varying adjudications with respect to individual
16 members of the CALIFORNIA LABOR SUB-CLASS which would
17 establish incompatible standards of conduct for the parties opposing
18 the CALIFORNIA LABOR SUB-CLASS; or,

19 2) Adjudication with respect to individual members of the
20 CALIFORNIA LABOR SUB-CLASS which would as a practical
21 matter be dispositive of interests of the other members not party to
22 the adjudication or substantially impair or impede their ability to
23 protect their interests.

24 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
25 refused to act on grounds generally applicable to the CALIFORNIA LABOR
26 SUB-CLASS, making appropriate class-wide relief with respect to the
27 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
28 uniformly fails to pay all wages due. Including the correct wages for all

1 time worked by the members of the CALIFORNIA LABOR SUB-CLASS
2 as required by law;

3 (c) Common questions of law and fact predominate as to the members of the
4 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
5 violations of California Law as listed above, and predominate over any
6 question affecting only individual CALIFORNIA LABOR SUB-CLASS
7 Members, and a Class Action is superior to other available methods for the
8 fair and efficient adjudication of the controversy, including consideration
9 of:

10 1) The interests of the members of the CALIFORNIA LABOR SUB-
11 CLASS in individually controlling the prosecution or defense of
12 separate actions in that the substantial expense of individual actions
13 will be avoided to recover the relatively small amount of economic
14 losses sustained by the individual CALIFORNIA LABOR SUB-
15 CLASS Members when compared to the substantial expense and
16 burden of individual prosecution of this litigation;

17 2) Class certification will obviate the need for unduly duplicative
18 litigation that would create the risk of:

19 A. Inconsistent or varying adjudications with respect to
20 individual members of the CALIFORNIA LABOR SUB-
21 CLASS, which would establish incompatible standards of
22 conduct for the DEFENDANT; and/or,

23 B. Adjudications with respect to individual members of the
24 CALIFORNIA LABOR SUB-CLASS would as a practical
25 matter be dispositive of the interests of the other members
26 not parties to the adjudication or substantially impair or
27 impede their ability to protect their interests;

28 3) In the context of wage litigation because a substantial number of

1 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
2 asserting their legal rights out of fear of retaliation by
3 DEFENDANT, which may adversely affect an individual's job with
4 DEFENDANT or with a subsequent employer, the Class Action is
5 the only means to assert their claims through a representative; and,
6 4) A class action is superior to other available methods for the fair and
7 efficient adjudication of this litigation because class treatment will
8 obviate the need for unduly and unnecessary duplicative litigation
9 that is likely to result in the absence of certification of this action
10 pursuant to Cal. Code of Civ. Proc. § 382.

11 37. This Court should permit this action to be maintained as a Class Action pursuant
12 to Cal. Code of Civ. Proc. § 382 because:

- 13 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
14 CLASS predominate over any question affecting only individual
15 CALIFORNIA LABOR SUB-CLASS Members;
- 16 (b) A Class Action is superior to any other available method for the fair and
17 efficient adjudication of the claims of the members of the CALIFORNIA
18 LABOR SUB-CLASS because in the context of employment litigation a
19 substantial number of individual CALIFORNIA LABOR SUB-CLASS
20 Members will avoid asserting their rights individually out of fear of
21 retaliation or adverse impact on their employment;
- 22 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous
23 that it is impractical to bring all members of the CALIFORNIA LABOR
24 SUB-CLASS before the Court;
- 25 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members,
26 will not be able to obtain effective and economic legal redress unless the
27 action is maintained as a Class Action;
- 28 (e) There is a community of interest in obtaining appropriate legal and

1 equitable relief for the acts of unfair competition, statutory violations and
2 other improprieties, and in obtaining adequate compensation for the
3 damages and injuries which DEFENDANT's actions have inflicted upon the
4 CALIFORNIA LABOR SUB-CLASS;

5 (f) There is a community of interest in ensuring that the combined assets of
6 DEFENDANT are sufficient to adequately compensate the members of the
7 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

8 (g) DEFENDANT has acted or refused to act on grounds generally applicable
9 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide
10 relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS
11 as a whole;

12 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
13 ascertainable from the business records of DEFENDANT. The
14 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS
15 Members who worked for DEFENDANT in California at any time during
16 the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

17 (i) Class treatment provides manageable judicial treatment calculated to bring
18 a efficient and rapid conclusion to all litigation of all wage and hour related
19 claims arising out of the conduct of DEFENDANT as to the members of the
20 CALIFORNIA LABOR SUB-CLASS.

21
22 **FIRST CAUSE OF ACTION**

23 **For Unlawful Business Practices**

24 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

25 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

26 38. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
27 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
28 Complaint.

1 39. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
2 § 17021.

3 40. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
4 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
5 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
6 as follows:

7 Any person who engages, has engaged, or proposes to engage in unfair competition
8 may be enjoined in any court of competent jurisdiction. The court may make such
9 orders or judgments, including the appointment of a receiver, as may be necessary
10 to prevent the use or employment by any person of any practice which constitutes
11 unfair competition, as defined in this chapter, or as may be necessary to restore to
12 any person in interest any money or property, real or personal, which may have
13 been acquired by means of such unfair competition.

14 Cal. Bus. & Prof. Code § 17203.

15 41. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
16 in a business practice which violates California law, including but not limited to, the applicable
17 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
18 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for which this
19 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
20 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
21 competition, including restitution of wages wrongfully withheld.

22 42. By the conduct alleged herein, DEFENDANT’s practices are unlawful and unfair
23 in that these practices violate public policy, are immoral, unethical, oppressive, unscrupulous or
24 substantially injurious to employees, and are without valid justification or utility for which this
25 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
26 Business & Professions Code, including restitution of wages wrongfully withheld.

27 43. By the conduct alleged herein, DEFENDANT’s practices are deceptive and
28 fraudulent in that DEFENDANT’s uniform policy and practice fails to provide the legally
29 mandated meal and rest periods, and the required amount of compensation for missed meal and
30 rest periods, reporting time pay, and overtime and minimum wages owed, due to a systematic
31 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial

1 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for
2 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
3 § 17203, including restitution of wages wrongfully withheld.

4 44. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
5 and deceptive in that DEFENDANT's employment practices cause PLAINTIFF and the other
6 members of the CALIFORNIA CLASS to be underpaid during their employment with
7 DEFENDANT.

8 45. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
9 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to provide
10 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
11 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

12 46. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
13 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal
14 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
15 each workday in which a second off-duty meal period was not timely provided for each ten (10)
16 hours of work.

17 47. PLAINTIFF further demands on behalf of herself and each member of the
18 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty
19 paid rest period was not timely provided as required by law.

20 48. By and through the unlawful and unfair business practices described herein,
21 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other
22 members of the CALIFORNIA CLASS, including earned wages for all time worked, and has
23 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment
24 of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly
25 compete against competitors who comply with the law.

26 49. All the acts described herein as violations of, among other things, the Industrial
27 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
28 Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive and

1 unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

3 50. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
4 and do, seek such relief as may be necessary to restore to them the money and property which
5 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
6 CLASS have been deprived, by means of the above described unlawful and unfair business
7 practices, including earned but unpaid wages for all time worked.

8 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging
11 in any unlawful and unfair business practices in the future.

12 52. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
13 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
14 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
15 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
16 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
17 and economic harm unless DEFENDANT is restrained from continuing to engage in these
18 unlawful and unfair business practices.

19
20 **SECOND CAUSE OF ACTION**

21 **For Failure To Pay Minimum Wages**

22 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

24 **and Against All Defendants)**

25 53. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
26 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
27 of this Complaint.

28 54. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code
2 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
3 calculate and pay reporting time and minimum wages to PLAINTIFF and CALIFORNIA CLASS
4 Members.

5 55. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
6 policy, an employer must timely pay its employees for all hours worked.

7 56. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
8 commission is the minimum wage to be paid to employees, and the payment of a less wage than
9 the minimum so fixed is unlawful.

10 57. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
11 including reporting time pay and minimum wage compensation and interest thereon, together with
12 the costs of suit.

13 58. DEFENDANT maintains a uniform wage practice of paying PLAINTIFF and the
14 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
15 of time they work. As set forth herein, DEFENDANT's uniform policy and practice is to
16 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS.

18 59. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
19 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
20 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
21 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
22 pay.

23 60. In committing these violations of the California Labor Code, DEFENDANT
24 inaccurately calculates the correct time worked and consequently underpays the actual time
25 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
26 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
27 benefits in violation of the California Labor Code, the Industrial Welfare Commission
28 requirements and other applicable laws and regulations.

1 61. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive the
3 correct reporting time pay and minimum wage compensation for their time worked for
4 DEFENDANT.

5 62. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked that they are
7 entitled to, constituting a failure to pay all earned wages. DEFENDANT fails to accurately pay
8 the PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS the wages for the time
9 they work in accordance with 1197 & 1197.1, even though the PLAINTIFF and the other members
10 of the CALIFORNIA LABOR SUB-CLASS are regularly required, permitted or suffered to work,
11 and do in fact work, off the clock time as to which DEFENDANT fails to accurately record and
12 pay as evidenced by DEFENDANT's business records and witnessed by employees.

13 63. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
14 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
15 for the true time they work, PLAINTIFF and the other members of the CALIFORNIA LABOR
16 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
17 presently unknown to them and which will be ascertained according to proof at trial.

18 64. DEFENDANT knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
20 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
21 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
22 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
24 reporting time pay and minimum wages for their time worked.

25 65. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
27 all time worked and provide them with the requisite compensation, DEFENDANT acted and
28 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
2 their legal rights, or the consequences to them, and with the despicable intent of depriving them
3 of their property and legal rights, and otherwise causing them injury in order to increase company
4 profits at the expense of these employees.

5 66. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
6 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
7 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
8 the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as alleged
9 herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
10 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

11 12 **THIRD CAUSE OF ACTION**

13 **For Failure To Pay Overtime Compensation**

14 **[Cal. Lab. Code §§ 510, *et seq.*]**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
16 **Defendants)**

17 67. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
18 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of
19 this Complaint.

20 68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code
22 and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these
23 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
24 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

25 69. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
26 public policy, an employer must timely pay its employees for all hours worked.

27 70. Cal. Lab. Code § 510 further provides that employees in California shall not be
28 employed more than eight (8) hours per workday and more than forty (40) hours per workweek

1 unless they receive additional compensation beyond their regular wages in amounts specified by
2 law.

3 71. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
4 including reporting time pay and minimum wage and overtime compensation and interest thereon,
5 together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an
6 employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

7 72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
8 CALIFORNIA LABOR SUB-CLASS Members are required by DEFENDANT to work for
9 DEFENDANT and are not paid for all the time they work, including overtime work.

10 73. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
11 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
12 of implementing a uniform policy and practice that failed to accurately record overtime work by
13 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
14 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
15 for overtime work, including, the overtime work performed in excess of eight (8) hours in a
16 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

17 74. In committing these violations of the California Labor Code, DEFENDANT
18 inaccurately records overtime worked and consequently underpays the overtime worked by
19 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an
20 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
21 California Labor Code, the Industrial Welfare Commission requirements and other applicable
22 laws and regulations.

23 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
24 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
25 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked including
26 overtime work.

27 76. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not receiving

1 full compensation for overtime worked.

2 77. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
3 from the overtime requirements of the law. None of these exemptions are applicable to the
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
5 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
6 to a valid collective bargaining agreement that would preclude the causes of action contained
7 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the
8 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-
9 waiveable rights provided by the State of California.

10 78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
11 other members of the CALIFORNIA LABOR SUB-CLASS are paid less for overtime worked that
12 they are entitled to, constituting a failure to pay all earned wages.

13 79. DEFENDANT fails to accurately pay the PLAINTIFF and the other members of the
14 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
15 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
16 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
17 are required to work, and did in fact work, overtime as to which DEFENDANT fails to accurately
18 record and pay as evidenced by DEFENDANT's business records and witnessed by employees.

19 80. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
20 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 for the true amount of time they worked, PLAINTIFF and the other members of the CALIFORNIA
22 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
23 which are presently unknown to them and which will be ascertained according to proof at trial.

24 81. DEFENDANT knew or should have known that PLAINTIFF and the other members
25 of the CALIFORNIA LABOR SUB-CLASS are under compensated for all overtime worked.
26 DEFENDANT systematically elected, either through intentional malfeasance or gross
27 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
28 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime
2 worked.

3 82. In performing the acts and practices herein alleged in violation of California labor
4 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
5 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
6 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard
8 for their legal rights, or the consequences to them, and with the despicable intent of depriving
9 them of their property and legal rights, and otherwise causing them injury in order to increase
10 company profits at the expense of these employees.

11 83. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
12 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,
13 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
14 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as alleged
15 herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
16 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

17 **FOURTH CAUSE OF ACTION**

18 **For Failure to Provide Required Meal Periods**

19 **[Cal. Lab. Code §§ 226.7 & 512]**

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

21 84. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
22 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
23 of this Complaint.

24 85. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all the
25 legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-
26 CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the
27 work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS does not
28

1 prevent these employees from being relieved of all of their duties for the legally required off-
2 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
3 CALIFORNIA LABOR SUB-CLASS Members are from time to time not fully relieved of duty
4 by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
5 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
6 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
7 Further, DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a
8 second off-duty meal period in some workdays in which these employees were required by
9 DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other members of the
10 CALIFORNIA LABOR SUB-CLASS therefore forfeit meal breaks without additional
11 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

12 86. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
13 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
14 Members who are not provided a meal period, in accordance with the applicable Wage Order, one
15 additional hour of compensation at each employee's regular rate of pay for each workday that a
16 meal period was not provided.

17 87. As a proximate result of the aforementioned violations, PLAINTIFF and
18 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
19 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

20 21 **FIFTH CAUSE OF ACTION**

22 **For Failure to Provide Required Rest Periods**

23 **[Cal. Lab. Code §§ 226.7 & 512]**

24 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
25 **Defendants)**

26 88. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
27 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
28 of this Complaint.

1 89. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are required
2 to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further,
3 these employees were denied their first rest periods of at least ten (10) minutes for some shifts
4 worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
5 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
6 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
7 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are also not provided with
8 one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and
9 other CALIFORNIA LABOR SUB-CLASS Members are periodically denied their proper rest
10 periods by DEFENDANT and DEFENDANT's managers.

11 90. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
12 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
13 Members who are not provided a rest period, in accordance with the applicable Wage Order, one
14 additional hour of compensation at each employee's regular rate of pay for each workday that rest
15 period was not provided.

16 91. As a proximate result of the aforementioned violations, PLAINTIFF and
17 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
18 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
19

20 **SIXTH CAUSE OF ACTION**

21 **For Failure to Provide Accurate Itemized Statements**

22 **[Cal. Lab. Code § 226]**

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
24 **Defendants)**

25 92. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
26 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
27 of this Complaint.

28 93. Cal. Labor Code § 226 provides that an employer must furnish employees with

1 an “accurate itemized” statement in writing showing:

2 (1) gross wages earned,

3 (2) total hours worked by the employee, except for any employee whose compensation
4 is solely based on a salary and who is exempt from payment of overtime under subdivision
5 (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

6 (3) the number of piecerate units earned and any applicable piece rate if the employee is
7 paid on a piece-rate basis,

8 (4) all deductions, provided that all deductions made on written orders of the employee
9 may be aggregated and shown as one item,

10 (5) net wages earned,

11 (6) the inclusive dates of the period for which the employee is paid,

12 (7) the name of the employee and his or her social security number, except that by January
13 1, 2008, only the last four digits of his or her social security number or an employee
14 identification number other than a social security number may be shown on the itemized
15 statement,

16 (8) the name and address of the legal entity that is the employer, and

17 (9) all applicable hourly rates in effect during the pay period and the corresponding
18 number of hours worked at each hourly rate by the employee.

19 94. DEFENDANT also fails to provide PLAINTIFF and the other members of the
20 CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed
21 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
22 provides that every employer shall furnish each of his or her employees with an accurate itemized
23 wage statement in writing showing, among other things, gross wages earned and all applicable
24 hourly rates in effect during the pay period and the corresponding amount of time worked at each
25 hourly rate. Aside, from the violations listed above, DEFENDANT failed to issue to PLAINTIFF
26 an itemized wage statement that lists all the requirements under California Labor Code 226 *et*
27 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other members
28 of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code

1 § 226.

2 95. DEFENDANT knowingly and intentionally fails to comply with Cal. Lab. Code §
3 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
4 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating
5 the correct wages for all missed meal and rest breaks and the amount of employment taxes which
6 were not properly paid to state and federal tax authorities. These damages are difficult to
7 estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
8 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period
9 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a
10 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the
11 time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and
12 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

13
14
15 **SEVENTH CAUSE OF ACTION**

16 **For Failure to Reimburse Employees for Required Expenses**

17 **[Cal. Lab. Code § 2802]**

18 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
19 **Defendants)**

20 96. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
21 reallege and incorporate by this reference, as though fully set forth herein, the prior
22 paragraphs of this Complaint.

23 97. Cal. Lab. Code § 2802 provides, in relevant part, that:

24 An employer shall indemnify his or her employee for all necessary
25 expenditures or losses incurred by the employee in direct consequence of the
26 discharge of his or her duties, or of his or her obedience to the directions of the
27 employer, even though unlawful, unless the employee, at the time of obeying
28 the directions, believed them to be unlawful.

98. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

1 members for required expenses incurred in the discharge of their job duties for
2 DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFF and the CALIFORNIA
3 LABOR SUB-CLASS members for expenses which include, but are not limited to, costs
4 related to using their personal cellular phones all on behalf of and for the benefit of
5 DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
6 Members are required by DEFENDANT to use their personal cell phones to respond to work
7 related issues. DEFENDANT's policy, practice and procedure is to not reimburse
8 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting
9 from using their personal cellular phones for DEFENDANT within the course and scope of
10 their employment for DEFENDANT. These expenses are necessary to complete their
11 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any
12 waiver of this expectation. Although these expenses are necessary expenses incurred by
13 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT fails to
14 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
15 for these expenses as an employer is required to do under the laws and regulations of
16 California.

17 99. PLAINTIFF therefore demands reimbursement for expenditures or losses
18 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
19 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
20 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
23 severally, as follows:

24 1. On behalf of the CALIFORNIA CLASS:

25 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
26 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

27 B) An order temporarily, preliminarily and permanently enjoining and restraining
28

1 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

2 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld
3 from compensation due to PLAINTIFF and the other members of the
4 CALIFORNIA CLASS; and,

5 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
6 for restitution of the sums incidental to DEFENDANT's violations due to
7 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

8 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

9 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes
10 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
11 pursuant to Cal. Code of Civ. Proc. § 382;

12 B) Compensatory damages, according to proof at trial, including compensatory
13 damages for minimum and overtime compensation due PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
15 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory
16 rate;

17 C) Meal and rest period compensation pursuant to California Labor Code Section
18 226.7 and the applicable IWC Wage Order;

19 D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;

20 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
21 which a violation occurs and one hundred dollars (\$100) per each member of the
22 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period,
23 not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award
24 of costs for violation of Cal. Lab. Code § 226; and,

25 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
26 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
27 costs of suit.

28 3. On all claims:

- 1 A) An award of interest, including prejudgment interest at the legal rate;
2 B) Such other and further relief as the Court deems just and equitable; and,
3 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
4 including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.

5
6 Dated: May7, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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8
9 By: _____
10 Norman B. Blumenthal
 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: May 7, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

EXHIBIT #4

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

July 30, 2020

CA2140

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Prometric LLC

Online Filing

Certified Mail #70201290000153360878

United Agent Group Inc.

4640 Admiralty Way, 5th Floor

Marina del Rey, CA 90292

Amended Notice For LWDA, Case No. LWDA-CM-785889-20

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiff Robert Wallace ("Plaintiff"), and other Aggrieved Employees in a lawsuit against Prometric LLC ("Defendant").

Previously, our offices represented Sarah Armstrong, who originally sent a PAGA Notice on May 7, 2020 ("Armstrong's PAGA Notice") which gave notice to the LWDA and Defendant to enable Ms. Armstrong to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* Armstrong's PAGA Notice did not include Plaintiff Wallace. This Amended Notice is intended to amend Armstrong's PAGA Notice and add Plaintiff Wallace.

Plaintiff Wallace was employed by Defendant from June of 2019 to November of 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control. Defendant, however, unlawfully failed to record and pay Plaintiff Wallace and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff Wallace and Aggrieved Employees to report

for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff Wallace and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff Wallace and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff Wallace and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff Wallace and other Aggrieved Employees with their wages. Plaintiff Wallace further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff Wallace contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff Wallace began and ended each shift and meal period. Plaintiff Wallace and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff Wallace and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable the Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code § 2699, *et seq.* The filing fee of \$75 was mailed to the Department of Industrial Relations Accounting unit when Ms. Armstrong filed the original PAGA Notice on May 7, 2020, which provided an identification of Ms. Armstrong, Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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Website: www.bamlawca.com

6 Attorneys for Plaintiffs

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF LOS ANGELES**

9
10 SARAH ARMSTRONG and ROBERT
11 WALLACE, individuals, on behalf of
12 themselves and on behalf of all persons
similarly situated,

13
14 Plaintiffs,

15 vs.

16 PROMETRIC LLC, a Limited Liability
17 Company, and DOES 1 through 50,
inclusive,

18
19 Defendants.

Case No.

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Sarah Armstrong and Robert Wallace (“PLAINTIFF”) individuals, on behalf
2 of themselves and all other similarly situated current and former employees alleges on
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following:

5
6 **THE PARTIES**

7 1. Defendant Prometric LLC (“DEFENDANT”) is a limited liability company that
8 at all relevant times mentioned herein conducted and continues to conduct substantial business
9 in the state of California.

10 2. DEFENDANT, also known as Prometric Testing, is a U.S.-based company in the
11 test administration industry. Its corporate headquarters is located in Canton (Baltimore,
12 Maryland) in the United States

13 3. Plaintiff Armstrong was employed by DEFENDANT from December of 2018 to
14 April of 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid
15 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
16 minimum and overtime wages due for all time worked.

17 4. Plaintiff Wallace was employed by DEFENDANT from June of 2019 to
18 November of 2019 and was at all times classified by DEFENDANT as a non-exempt employee,
19 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
20 of minimum and overtime wages due for all time worked.

21 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
22 class, defined as all individuals who are or previously were employed by DEFENDANT in
23 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
24 during the period beginning four (4) years prior to the filing of this Complaint and ending on
25 the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
26 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
27 dollars (\$5,000,000.00).

28 6. PLAINTIFFS bring this Class Action on behalf of themselves and a

1 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
2 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's uniform policy
3 and practice which failed to lawfully compensate these employees. DEFENDANT's uniform
4 policy and practice alleged herein is an unlawful, unfair and deceptive business practice
5 whereby DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other
6 members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
7 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
8 future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS
9 who have been economically injured by DEFENDANT's past and current unlawful conduct,
10 and all other appropriate legal and equitable relief.

11 7. The true names and capacities, whether individual, corporate, subsidiary,
12 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
13 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
14 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
15 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
16 ascertained. PLAINTIFFS are informed and believes, and based upon that information and
17 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,
18 inclusive, are responsible in some manner for one or more of the events and happenings that
19 proximately caused the injuries and damages hereinafter alleged.

20 8. The agents, servants and/or employees of the Defendants and each of them acting
21 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
22 agent, servant and/or employee of the Defendants, and personally participated in the conduct
23 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
24 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
25 all Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
26 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
27 Defendants' agents, servants and/or employees.
28

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. DEFENDANT required PLAINTIFFS and the CALIFORNIA CLASS Members to work off the clock without paying them for all the time they performed post-shift duties, specifically by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFFS and CALIFORNIA CLASS Members to complete on a daily and/or weekly basis. Specifically, DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS members to clock out of DEFENDANT's timekeeping system and then set the alarm for the location these employees were working at. DEFENDANT failed to pay PLAINTIFFS and CALIFORNIA CLASS Members for the time they spent working after they have already clocked out of DEFENDANT's timekeeping system at the end of their work shifts. Additionally, from time to time, DEFENDANT required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by work assignments. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by from time to time working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

10. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks and were not fully relieved of duty for meal periods. PLAINTIFFS and other CALIFORNIA CLASS Members are from time to time required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal

1 break. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS
2 Members with a second off-duty meal period from time to time in which these employees were
3 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFFS and
4 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
5 compensation and in accordance with DEFENDANT's corporate policy and practice.

6 11. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
7 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
8 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
9 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
10 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
11 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
12 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
13 or more from time to time. PLAINTIFFS and other CALIFORNIA CLASS Members were also
14 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
15 PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time denied their
16 proper rest periods by DEFENDANT and DEFENDANT's managers. Additionally, the
17 applicable California Wage Order requires employers to provide employees with off-duty rest
18 periods, which the California Supreme Court defined as time during which an employee is
19 relieved from all work related duties and free from employer control. In so doing, the Court
20 held that the requirement under California law that employers authorize and permit all
21 employees to take rest period means that employers must relieve employees of all duties and
22 relinquish control over how employees spend their time which includes control over the
23 locations where employees may take their rest period. Employers cannot impose controls that
24 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
25 DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA CLASS Members
26 from unconstrained walks and required these employees to remain on DEFENDANT's premises
27 under DEFENDANT's control during what should be their paid, off duty rest periods.

28 12. DEFENDANT also failed to provide PLAINTIFFS and the other members of the

1 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
2 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
3 every employer shall furnish each of his or her employees with an accurate itemized wage
4 statement in writing showing, among other things, gross wages earned and all applicable hourly
5 rates in effect during the pay period and the corresponding amount of time worked at each
6 hourly rate. Aside, from the violations listed above, DEFENDANT failed to issue to
7 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor
8 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the
9 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
10 Code § 226.

11 13. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
12 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
13 incurred by PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of
14 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
15 2802, employers are required to indemnify employees for all expenses incurred in the course
16 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
17 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
18 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
19 directions of the employer, even though unlawful, unless the employee, at the time of obeying
20 the directions, believed them to be unlawful."

21 14. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
22 Members as a business expense, were required by DEFENDANT to use their own personal
23 cellular phones as a result of and in furtherance of their job duties as employees for
24 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
25 associated with the use of their personal cellular phones for DEFENDANT's benefit.
26 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
27 DEFENDANT to use their personal cellular phones to respond to managers while off the clock
28 (which also resulted in minimum wage and overtime violations) and DEFENDANT required

1 PLAINTIFFS and other CALIFORNIA CLASS Members to download a scheduling application
2 on their personal cell phone called "When I Work." As a result, in the course of their
3 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
4 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
5 related to the use of their personal cellular phones all on behalf of and for the benefit of
6 DEFENDANT.

7 15. In violation of the applicable sections of the California Labor Code and the
8 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
9 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
10 failed to compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for
11 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended
12 to purposefully avoid the payment for all time worked as required by California law which
13 allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
14 complied with the law. To the extent equitable tolling operates to toll claims by the
15 CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be
16 adjusted accordingly.

17 16. By reason of this uniform conduct applicable to PLAINTIFFS and all
18 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
19 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
20 (the "UCL"), by engaging in a company-wide policy and procedure which fails to accurately
21 calculate and record all missed meal and rest periods and failed to pay all minimum and
22 overtime wages due to PLAINTIFFS and other CALIFORNIA CLASS Members. The proper
23 recording of these employees' missed meal and rest breaks is the DEFENDANT's burden. As
24 a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
25 DEFENDANT fails to properly calculate and/or pay all required compensation for work
26 performed by the members of the CALIFORNIA CLASS and violated the California Labor
27 Code and regulations promulgated thereunder as herein alleged.

28 17. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally

1 required off-duty meal and rest breaks to them as required by the applicable Wage Order and
2 Labor Code and failed to pay them all minimum and overtime wages due to them.
3 DEFENDANT did not have a policy or practice which provided timely off-duty meal and rest
4 breaks to PLAINTIFFS and also failed to compensate PLAINTIFFS for their missed meal and
5 rest breaks. The nature of the work performed by the PLAINTIFFS did not prevent them from
6 being relieved of all of their duties for the legally required off-duty meal periods. As a result,
7 DEFENDANT's failure to provide PLAINTIFFS with the legally required meal periods is
8 evidenced by DEFENDANT's business records. DEFENDANT also required PLAINTIFFS
9 to work off the clock without paying them for all the time they were working for DEFENDANT
10 and performing post-shift duties, specifically by failing to provide enough labor hours to
11 accomplish all the job tasks that DEFENDANT expected PLAINTIFFS to complete on a daily
12 and/or weekly basis. The amount in controversy for PLAINTIFFS individually does not exceed
13 the sum or value of \$75,000.

14 **JURISDICTION AND VENUE**

15
16 18. This Court has jurisdiction over this Action pursuant to California Code of Civil
17 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
18 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
19 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

20 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
21 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT,
22 resides in this County, and DEFENDANT (i) currently maintains and at all relevant times
23 maintained offices and facilities in this County and/or conducts substantial business in this
24 County, and (ii) committed the wrongful conduct herein alleged in this County against members
25 of the CALIFORNIA CLASS.

26 **THE CALIFORNIA CLASS**

27
28 20. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive

1 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
2 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
3 all individuals who are or previously were employed by DEFENDANT in California and
4 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
5 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
6 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
7 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
8 (\$5,000,000.00).

9 21. To the extent equitable tolling operates to toll claims by the CALIFORNIA
10 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
11 accordingly.

12 22. DEFENDANT, as a matter of company policy, practice and procedure, and in
13 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
14 requirements, and the applicable provisions of California law, intentionally, knowingly, and
15 wilfully, engages in a practice whereby DEFENDANT systematically fails to record all meal
16 and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even
17 though DEFENDANT enjoys the benefit of this work, requires employees to perform this work
18 and permits or suffers to permit this work.

19 23. DEFENDANT has the legal burden to establish that each and every
20 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
21 required by California laws. The DEFENDANT, however, as a matter of uniform and
22 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
23 PERIOD and still fails to have in place a policy or practice to ensure that each and every
24 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
25 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
26 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
27 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

28 24. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA

1 CLASS Members is impracticable.

2 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
3 California law by:

- 4 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
5 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
6 deceptively having in place company policies, practices and procedures
7 that uniformly and systematically failed to record and pay PLAINTIFFS
8 and the other members of the CALIFORNIA CLASS for all time worked
9 minimum wages owed and overtime wages owed for work performed by
10 these employees;
- 11 (b) Committing an act of unfair competition in violation of the UCL, by
12 failing to provide the PLAINTIFFS and the other members of the
13 CALIFORNIA CLASS with the legally required meal and rest periods;
14 and,
- 15 (c) Committing an act of unfair competition in violation of the California
16 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
17 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
18 the CALIFORNIA CLASS members with necessary expenses incurred in
19 the discharge of their job duties.

20 26. This Class Action meets the statutory prerequisites for the maintenance of a Class
21 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 22 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
23 that the joinder of all such persons is impracticable and the disposition of
24 their claims as a class will benefit the parties and the Court;
- 25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
26 that are raised in this Complaint are common to the CALIFORNIA
27 CLASS will apply uniformly to every member of the CALIFORNIA
28 CLASS;

1 (c) The claims of the representative PLAINTIFFS are typical of the claims of
2 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
3 other members of the CALIFORNIA CLASS, is classified as a non-
4 exempt employee paid on an hourly basis who has been subjected to the
5 DEFENDANT's deceptive practice and policy which failed to provide the
6 legally required meal and rest periods to the CALIFORNIA CLASS and
7 thereby systematically underpaid compensation to PLAINTIFFS and
8 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
9 result of DEFENDANT's employment practices. PLAINTIFFS and the
10 members of the CALIFORNIA CLASS were and are similarly or
11 identically harmed by the same unlawful, deceptive, unfair and pervasive
12 pattern of misconduct engaged in by DEFENDANT; and,

13 (d) The representative PLAINTIFFS will fairly and adequately represent and
14 protect the interest of the CALIFORNIA CLASS, and has retained
15 counsel who are competent and experienced in Class Action litigation.
16 There are no material conflicts between the claims of the representative
17 PLAINTIFFS and the members of the CALIFORNIA CLASS that would
18 make class certification inappropriate. Counsel for the CALIFORNIA
19 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
20 Members.

21 27. In addition to meeting the statutory prerequisites to a Class Action, this action is
22 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

23 (a) Without class certification and determination of declaratory, injunctive,
24 statutory and other legal questions within the class format, prosecution of
25 separate actions by individual members of the CALIFORNIA CLASS will
26 create the risk of:

27 1) Inconsistent or varying adjudications with respect to individual
28 members of the CALIFORNIA CLASS which would establish

1 incompatible standards of conduct for the parties opposing the
2 CALIFORNIA CLASS; and/or,

3 2) Adjudication with respect to individual members of the
4 CALIFORNIA CLASS which would as a practical matter be
5 dispositive of interests of the other members not party to the
6 adjudication or substantially impair or impede their ability to
7 protect their interests.

8 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
9 act on grounds generally applicable to the CALIFORNIA CLASS, making
10 appropriate class-wide relief with respect to the CALIFORNIA CLASS
11 as a whole in that DEFENDANT uniformly failed to pay all wages due to
12 members of the CALIFORNIA CLASS as required by law;

13 1) With respect to the First Cause of Action, the final relief on behalf
14 of the CALIFORNIA CLASS sought does not relate exclusively to
15 restitution because through this claim PLAINTIFFS seeks
16 declaratory relief holding that the DEFENDANT's policy and
17 practices constitute unfair competition, along with declaratory
18 relief, injunctive relief, and incidental equitable relief as may be
19 necessary to prevent and remedy the conduct declared to constitute
20 unfair competition;

21 (c) Common questions of law and fact exist as to the members of the
22 CALIFORNIA CLASS, with respect to the practices and violations of
23 California law as listed above, and predominate over any question
24 affecting only individual CALIFORNIA CLASS Members, and a Class
25 Action is superior to other available methods for the fair and efficient
26 adjudication of the controversy, including consideration of:

27 1) The interests of the members of the CALIFORNIA CLASS in
28 individually controlling the prosecution or defense of separate

1 actions in that the substantial expense of individual actions will be
2 avoided to recover the relatively small amount of economic losses
3 sustained by the individual CALIFORNIA CLASS Members when
4 compared to the substantial expense and burden of individual
5 prosecution of this litigation;

6 2) Class certification will obviate the need for unduly duplicative
7 litigation that would create the risk of:

8 A. Inconsistent or varying adjudications with respect to
9 individual members of the CALIFORNIA CLASS, which
10 would establish incompatible standards of conduct for the
11 DEFENDANT; and/or,

12 B. Adjudications with respect to individual members of the
13 CALIFORNIA CLASS would as a practical matter be
14 dispositive of the interests of the other members not parties
15 to the adjudication or substantially impair or impede their
16 ability to protect their interests;

17 3) In the context of wage litigation because a substantial number of
18 individual CALIFORNIA CLASS Members will avoid asserting
19 their legal rights out of fear of retaliation by DEFENDANT, which
20 may adversely affect an individual's job with DEFENDANT or
21 with a subsequent employer, the Class Action is the only means to
22 assert their claims through a representative; and,

23 4) A class action is superior to other available methods for the fair
24 and efficient adjudication of this litigation because class treatment
25 will obviate the need for unduly and unnecessary duplicative
26 litigation that is likely to result in the absence of certification of
27 this action pursuant to Cal. Code of Civ. Proc. § 382.

28 28. This Court should permit this action to be maintained as a Class Action pursuant

1 to Cal. Code of Civ. Proc. § 382 because:

- 2 (a) The questions of law and fact common to the CALIFORNIA CLASS
3 predominate over any question affecting only individual CALIFORNIA
4 CLASS Members because the DEFENDANT's employment practices are
5 uniform and systematically applied with respect to the CALIFORNIA
6 CLASS;
- 7 (b) A Class Action is superior to any other available method for the fair and
8 efficient adjudication of the claims of the members of the CALIFORNIA
9 CLASS because in the context of employment litigation a substantial
10 number of individual CALIFORNIA CLASS Members will avoid
11 asserting their rights individually out of fear of retaliation or adverse
12 impact on their employment;
- 13 (c) The members of the CALIFORNIA CLASS are so numerous that it is
14 impractical to bring all members of the CALIFORNIA CLASS before the
15 Court;
- 16 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
17 able to obtain effective and economic legal redress unless the action is
18 maintained as a Class Action;
- 19 (e) There is a community of interest in obtaining appropriate legal and
20 equitable relief for the acts of unfair competition, statutory violations and
21 other improprieties, and in obtaining adequate compensation for the
22 damages and injuries which DEFENDANT's actions have inflicted upon
23 the CALIFORNIA CLASS;
- 24 (f) There is a community of interest in ensuring that the combined assets of
25 DEFENDANT are sufficient to adequately compensate the members of
26 the CALIFORNIA CLASS for the injuries sustained;
- 27 (g) DEFENDANT has acted or refused to act on grounds generally applicable
28 to the CALIFORNIA CLASS, thereby making final class-wide relief

appropriate with respect to the CALIFORNIA CLASS as a whole;

(h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

29. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT's employees who as have been systematically, intentionally and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles of similarly situated employees when they have been identified.

THE CALIFORNIA LABOR SUB-CLASS

30. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

31. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engages in a practice whereby DEFENDANT fails to correctly calculate compensation for the time worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT

1 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
2 to permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
3 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
4 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
5 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
6 SUB-CLASS PERIOD should be adjusted accordingly.

7 32. DEFENDANT maintains records from which the Court can ascertain and identify
8 by name and job title, each of DEFENDANT's employees who have been systematically,
9 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
10 procedures as herein alleged. PLAINTIFFS will seek leave to amend the complaint to include
11 any additional job titles of similarly situated employees when they have been identified.

12 33. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
13 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

14 34. Common questions of law and fact exist as to members of the CALIFORNIA
15 LABOR SUB-CLASS, including, but not limited, to the following:

- 16 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
17 compensation due to members of the CALIFORNIA LABOR SUB-
18 CLASS for missed meal and rest breaks in violation of the California
19 Labor Code and California regulations and the applicable California Wage
20 Order;
- 21 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
22 members of the CALIFORNIA LABOR SUB-CLASS with accurate
23 itemized wage statements;
- 24 (c) Whether DEFENDANT has engaged in unfair competition by the
25 above-listed conduct;
- 26 (d) The proper measure of damages and penalties owed to the members of the
27 CALIFORNIA LABOR SUB-CLASS; and,
- 28 (e) Whether DEFENDANT's conduct was willful.

1 35. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
2 under California law by:

- 3 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
4 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
5 CLASS all wages due for overtime worked, for which DEFENDANT is
6 liable pursuant to Cal. Lab. Code § 1194;
- 7 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
8 accurately pay PLAINTIFFS and the members of the CALIFORNIA
9 LABOR SUB-CLASS the correct minimum wage pay for which
10 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 11 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
12 the members of the CALIFORNIA LABOR SUB-CLASS with an
13 accurate itemized statement in writing showing the corresponding correct
14 amount of wages earned by the employee; and,
- 15 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
16 PLAINTIFFS and the other members of the CALIFORNIA LABOR
17 SUB-CLASS with all legally required off-duty, uninterrupted thirty (30)
18 minute meal breaks and the legally required off-duty rest breaks;
- 19 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
20 and the CALIFORNIA LABOR SUB-CLASS members with necessary
21 expenses incurred in the discharge of their job duties.

22 36. This Class Action meets the statutory prerequisites for the maintenance of a Class
23 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 24 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
25 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
26 Members is impracticable and the disposition of their claims as a class
27 will benefit the parties and the Court;
- 28 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues

1 that are raised in this Complaint are common to the CALIFORNIA
2 LABOR SUB-CLASS and will apply uniformly to every member of the
3 CALIFORNIA LABOR SUB-CLASS;

4 (c) The claims of the representative PLAINTIFFS are typical of the claims of
5 each member of the CALIFORNIA LABOR SUB-CLASS.
6 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
7 SUB-CLASS, is a non-exempt employee paid on an hourly basis who has
8 been subjected to the DEFENDANT's practice and policy which fails to
9 pay the correct amount of wages due to the CALIFORNIA LABOR SUB-
10 CLASS. PLAINTIFFS sustained economic injury as a result of
11 DEFENDANT's employment practices. PLAINTIFFS and the members
12 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
13 identically harmed by the same unlawful, deceptive, unfair and pervasive
14 pattern of misconduct engaged in by DEFENDANT; and,

15 (d) The representative PLAINTIFFS will fairly and adequately represent and
16 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
17 retained counsel who are competent and experienced in Class Action
18 litigation. There are no material conflicts between the claims of the
19 representative PLAINTIFFS and the members of the CALIFORNIA
20 LABOR SUB-CLASS that would make class certification inappropriate.
21 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
22 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

23 37. In addition to meeting the statutory prerequisites to a Class Action, this action is
24 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

25 (a) Without class certification and determination of declaratory, injunctive,
26 statutory and other legal questions within the class format, prosecution of
27 separate actions by individual members of the CALIFORNIA LABOR
28 SUB-CLASS will create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
- 2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly fails to pay all wages due. Including the correct wages for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA

LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

38. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA LABOR

1 SUB-CLASS predominate over any question affecting only individual
2 CALIFORNIA LABOR SUB-CLASS Members;

3 (b) A Class Action is superior to any other available method for the fair and
4 efficient adjudication of the claims of the members of the CALIFORNIA
5 LABOR SUB-CLASS because in the context of employment litigation a
6 substantial number of individual CALIFORNIA LABOR SUB-CLASS
7 Members will avoid asserting their rights individually out of fear of
8 retaliation or adverse impact on their employment;

9 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
10 numerous that it is impractical to bring all members of the CALIFORNIA
11 LABOR SUB-CLASS before the Court;

12 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS
13 Members, will not be able to obtain effective and economic legal redress
14 unless the action is maintained as a Class Action;

15 (e) There is a community of interest in obtaining appropriate legal and
16 equitable relief for the acts of unfair competition, statutory violations and
17 other improprieties, and in obtaining adequate compensation for the
18 damages and injuries which DEFENDANT's actions have inflicted upon
19 the CALIFORNIA LABOR SUB-CLASS;

20 (f) There is a community of interest in ensuring that the combined assets of
21 DEFENDANT are sufficient to adequately compensate the members of
22 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

23 (g) DEFENDANT has acted or refused to act on grounds generally applicable
24 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
25 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
26 CLASS as a whole;

27 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
28 ascertainable from the business records of DEFENDANT. The

CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)

39. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

40. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code § 17021.

41. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

42. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the

1 applicable Industrial Wage Order(s), the California Code of Regulations and the California
2 Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802,
3 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
4 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
5 unfair competition, including restitution of wages wrongfully withheld.

6 43. By the conduct alleged herein, DEFENDANT's practices were unlawful and
7 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
8 unscrupulous or substantially injurious to employees, and were without valid justification or
9 utility for which this Court should issue equitable and injunctive relief pursuant to Section
10 17203 of the California Business & Professions Code, including restitution of wages wrongfully
11 withheld.

12 44. By the conduct alleged herein, DEFENDANT's practices were deceptive and
13 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
14 mandated meal and rest periods, and the required amount of compensation for missed meal and
15 rest periods, reporting time pay, and overtime and minimum wages owed, due to a systematic
16 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
17 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
18 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
19 Prof. Code § 17203, including restitution of wages wrongfully withheld.

20 45. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
21 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
22 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
23 DEFENDANT.

24 46. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
25 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed
26 to provide all legally required meal breaks to PLAINTIFFS and the other members of the
27 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

28 47. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each

1 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
2 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
3 for each workday in which a second off-duty meal period was not timely provided for each ten
4 (10) hours of work.

5 48. PLAINTIFFS further demand on behalf of themselves and each member of the
6 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
7 duty paid rest period was not timely provided as required by law.

8 49. By and through the unlawful and unfair business practices described herein,
9 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
10 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
11 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
12 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
13 to unfairly compete against competitors who comply with the law.

14 50. All the acts described herein as violations of, among other things, the Industrial
15 Welfare Commission Wage Orders, the California Code of Regulations, and the California
16 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
17 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
18 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

19 51. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
20 to, and do, seek such relief as may be necessary to restore to them the money and property
21 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
22 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
23 unfair business practices, including earned but unpaid wages for all time worked.

24 52. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
25 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
26 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
27 engaging in any unlawful and unfair business practices in the future.

28 53. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,

1 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
2 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
3 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
4 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
5 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
6 engage in these unlawful and unfair business practices.

7
8 **SECOND CAUSE OF ACTION**

9 **For Failure To Pay Minimum Wages**

10 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

11 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

12 **and Against All Defendants)**

13 54. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
14 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
15 paragraphs of this Complaint.

16 55. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
17 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
18 Labor Code, the Los Angeles Minimum Wage Ordinance and the Industrial Welfare
19 Commission requirements for DEFENDANT's failure to accurately calculate and pay reporting
20 time and minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

21 56. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
22 public policy, an employer must timely pay its employees for all hours worked.

23 57. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a less wage than
25 the minimum so fixed is unlawful.

26 58. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including reporting time pay and minimum wage compensation and interest thereon, together
28 with the costs of suit.

1 59. DEFENDANT maintains a uniform wage practice of paying PLAINTIFFS and
2 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
3 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
4 is to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
5 other members of the CALIFORNIA LABOR SUB-CLASS and also DEFENDANT failed to
6 pay PLAINTIFF and other CALIFORNIA CLASS Members who worked in Los Angeles in
7 accordance with the Los Angeles County Minimum Wage Ordinance.

8 60. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
9 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
10 result of implementing a uniform policy and practice that denies accurate compensation to
11 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS in regards
12 to minimum wage pay.

13 61. In committing these violations of the California Labor Code, DEFENDANT
14 inaccurately calculates the correct time worked and consequently underpays the actual time
15 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
16 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
17 benefits in violation of the California Labor Code, the Industrial Welfare Commission
18 requirements and other applicable laws and regulations.

19 62. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
20 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS do not
21 receive the correct reporting time pay and minimum wage compensation for their time worked
22 for DEFENDANT.

23 63. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
24 the other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked
25 that they are entitled to, constituting a failure to pay all earned wages. DEFENDANT fails to
26 accurately pay the PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS the
27 wages for the time they work in accordance with 1197 & 1197.1, even though the PLAINTIFFS
28 and the other members of the CALIFORNIA LABOR SUB-CLASS are regularly required,

1 permitted or suffered to work, and do in fact work, off the clock time as to which
2 DEFENDANT fails to accurately record and pay as evidenced by DEFENDANT's business
3 records and witnessed by employees.

4 64. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
5 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
6 CLASS for the true time they work, PLAINTIFFS and the other members of the CALIFORNIA
7 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
8 which are presently unknown to them and which will be ascertained according to proof at trial.

9 65. DEFENDANT knew or should have known that PLAINTIFFS and the other
10 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
11 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
13 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
14 pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the
15 correct reporting time pay and minimum wages for their time worked.

16 66. In performing the acts and practices herein alleged in violation of California labor
17 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
18 all time worked and provide them with the requisite compensation, DEFENDANT acted and
19 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other
20 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
21 their legal rights, or the consequences to them, and with the despicable intent of depriving them
22 of their property and legal rights, and otherwise causing them injury in order to increase
23 company profits at the expense of these employees.

24 67. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
25 CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory
26 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
27 provided by the California Labor Code and/or other applicable statutes. DEFENDANT's
28 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS

1 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
2 statutory costs.

3
4 **THIRD CAUSE OF ACTION**

5 **For Failure To Pay Overtime Compensation**

6 **[Cal. Lab. Code §§ 510, *et seq.*]**

7 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
8 **Defendants)**

9 68. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
10 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior
11 paragraphs of this Complaint.

12 69. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
13 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
14 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
15 to pay these employees for all overtime worked, including, work performed in excess of eight
16 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
17 workweek.

18 70. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
19 public policy, an employer must timely pay its employees for all hours worked.

20 71. Cal. Lab. Code § 510 further provides that employees in California shall not be
21 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
22 unless they receive additional compensation beyond their regular wages in amounts specified
23 by law.

24 72. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
25 including reporting time pay and minimum wage and overtime compensation and interest
26 thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the
27 employment of an employee for longer hours than those fixed by the Industrial Welfare
28 Commission is unlawful.

1 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
2 CALIFORNIA LABOR SUB-CLASS Members are required by DEFENDANT to work for
3 DEFENDANT and are not paid for all the time they work, including overtime work.

4 74. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
5 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
6 result of implementing a uniform policy and practice that failed to accurately record overtime
7 work by PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied
8 accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR
9 SUB-CLASS for overtime work, including, the overtime work performed in excess of eight (8)
10 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
11 workweek.

12 75. In committing these violations of the California Labor Code, DEFENDANT
13 inaccurately records overtime worked and consequently underpays the overtime worked by
14 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
15 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
16 of the California Labor Code, the Industrial Welfare Commission requirements and other
17 applicable laws and regulations.

18 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
19 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
20 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
21 including overtime work.

22 76. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
23 the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not
24 receiving full compensation for overtime worked.

25 77. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
26 from the overtime requirements of the law. None of these exemptions are applicable to the
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
28 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not

1 subject to a valid collective bargaining agreement that would preclude the causes of action
2 contained herein this Complaint. Rather, PLAINTIFFS brings this Action on behalf of herself
3 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
4 negotiable, non-waiveable rights provided by the State of California.

5 78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
6 the other members of the CALIFORNIA LABOR SUB-CLASS are paid less for overtime
7 worked that they are entitled to, constituting a failure to pay all earned wages.

8 79. DEFENDANT fails to accurately pay the PLAINTIFFS and the other members
9 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
10 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
11 1194 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR
12 SUB-CLASS are required to work, and did in fact work, overtime as to which DEFENDANT
13 fails to accurately record and pay as evidenced by DEFENDANT's business records and
14 witnessed by employees.

15 80. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
16 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
17 CLASS for the true amount of time they worked, PLAINTIFFS and the other members of the
18 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
19 injury in amounts which are presently unknown to them and which will be ascertained
20 according to proof at trial.

21 81. DEFENDANT knew or should have known that PLAINTIFFS and the other
22 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for all overtime
23 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
24 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
25 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
26 pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for
27 overtime worked.

28 82. In performing the acts and practices herein alleged in violation of California labor

1 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
2 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
3 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and
4 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
5 disregard for their legal rights, or the consequences to them, and with the despicable intent of
6 depriving them of their property and legal rights, and otherwise causing them injury in order
7 to increase company profits at the expense of these employees.

8 83. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
9 CLASS therefore request recovery of all overtime wages, according to proof, interest, statutory
10 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
11 provided by the California Labor Code and/or other applicable statutes. DEFENDANT's
12 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS
13 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
14 statutory costs.

15
16 **FOURTH CAUSE OF ACTION**

17 **For Failure to Provide Required Meal Periods**

18 **[Cal. Lab. Code §§ 226.7 & 512]**

19 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

20 84. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
21 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
22 paragraphs of this Complaint.

23 85. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all
24 the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR
25 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
26 of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS
27 does not prevent these employees from being relieved of all of their duties for the legally
28 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and

1 other CALIFORNIA LABOR SUB-CLASS Members are from time to time not fully relieved
2 of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to
3 provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally
4 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
5 business records. Further, DEFENDANT fails to provide PLAINTIFFS and CALIFORNIA
6 CLASS Members with a second off-duty meal period in some workdays in which these
7 employees were required by DEFENDANT to work ten (10) hours of work. As a result,
8 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeit
9 meal breaks without additional compensation and in accordance with DEFENDANT's strict
10 corporate policy and practice.

11 86. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
12 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-
13 CLASS Members who are not provided a meal period, in accordance with the applicable Wage
14 Order, one additional hour of compensation at each employee's regular rate of pay for each
15 workday that a meal period was not provided.

16 87. As a proximate result of the aforementioned violations, PLAINTIFFS and
17 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
19 suit.

20 21 **FIFTH CAUSE OF ACTION**

22 **For Failure to Provide Required Rest Periods**

23 **[Cal. Lab. Code §§ 226.7 & 512]**

24 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
25 **Defendants)**

26 88. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
27 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
28 paragraphs of this Complaint.

1 89. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are
2 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
3 Further, these employees were denied their first rest periods of at least ten (10) minutes for
4 some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least
5 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
6 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
7 or more. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are also not
8 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
9 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are periodically denied
10 their proper rest periods by DEFENDANT and DEFENDANT's managers.

11 90. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
12 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-
13 CLASS Members who are not provided a rest period, in accordance with the applicable Wage
14 Order, one additional hour of compensation at each employee's regular rate of pay for each
15 workday that rest period was not provided.

16 91. As a proximate result of the aforementioned violations, PLAINTIFFS and
17 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
19 suit.

20
21 **SIXTH CAUSE OF ACTION**

22 **For Failure to Provide Accurate Itemized Statements**

23 **[Cal. Lab. Code § 226]**

24 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
25 **Defendants)**

26 92. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
27 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
28 paragraphs of this Complaint.

1 93. Cal. Labor Code § 226 provides that an employer must furnish employees with
2 an “accurate itemized” statement in writing showing:

3 (1) gross wages earned,

4 (2) total hours worked by the employee, except for any employee whose compensation
5 is solely based on a salary and who is exempt from payment of overtime under
6 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
7 Commission,

8 (3) the number of piecerate units earned and any applicable piece rate if the employee
9 is paid on a piece-rate basis,

10 (4) all deductions, provided that all deductions made on written orders of the employee
11 may be aggregated and shown as one item,

12 (5) net wages earned,

13 (6) the inclusive dates of the period for which the employee is paid,

14 (7) the name of the employee and his or her social security number, except that by
15 January 1, 2008, only the last four digits of his or her social security number or an
16 employee identification number other than a social security number may be shown on
17 the itemized statement,

18 (8) the name and address of the legal entity that is the employer, and

19 (9) all applicable hourly rates in effect during the pay period and the corresponding
20 number of hours worked at each hourly rate by the employee.

21 94. DEFENDANT also fails to provide PLAINTIFFS and the other members of the
22 CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed
23 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
24 provides that every employer shall furnish each of his or her employees with an accurate
25 itemized wage statement in writing showing, among other things, gross wages earned and all
26 applicable hourly rates in effect during the pay period and the corresponding amount of time
27 worked at each hourly rate. Aside, from the violations listed above, DEFENDANT failed to
28 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under

1 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
2 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with wage
3 statements which violated Cal. Lab. Code § 226.

4 95. DEFENDANT knowingly and intentionally fails to comply with Cal. Lab. Code
5 § 226, causing injury and damages to PLAINTIFFS and the other members of the
6 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
7 expended calculating the correct wages for all missed meal and rest breaks and the amount of
8 employment taxes which were not properly paid to state and federal tax authorities. These
9 damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the
10 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars
11 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars
12 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in
13 an amount according to proof at the time of trial (but in no event more than four thousand
14 dollars (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA
15 LABOR SUB-CLASS herein).

16
17
18 **SEVENTH CAUSE OF ACTION**

19 **For Failure to Reimburse Employees for Required Expenses**

20 **[Cal. Lab. Code § 2802]**

21 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
22 **Defendants)**

23 96. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members
24 reallege and incorporate by this reference, as though fully set forth herein, the prior
25 paragraphs of this Complaint.

26 97. Cal. Lab. Code § 2802 provides, in relevant part, that:

27 An employer shall indemnify his or her employee for all necessary
28 expenditures or losses incurred by the employee in direct consequence of the
discharge of his or her duties, or of his or her obedience to the directions of
the employer, even though unlawful, unless the employee, at the time of

1 obeying the directions, believed them to be unlawful.

2 98. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
3 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
4 CLASS members for required expenses incurred in the discharge of their job duties for
5 DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFFS and the
6 CALIFORNIA LABOR SUB-CLASS members for expenses which include, but are not
7 limited to, costs related to using their personal cellular phones all on behalf of and for the
8 benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR
9 SUB-CLASS Members are required by DEFENDANT to use their personal cell phones to
10 respond to work related issues. DEFENDANT's policy, practice and procedure is to not
11 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
12 expenses resulting from using their personal cellular phones for DEFENDANT within the
13 course and scope of their employment for DEFENDANT. These expenses are necessary to
14 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct
15 to assert any waiver of this expectation. Although these expenses are necessary expenses
16 incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,
17 DEFENDANT fails to indemnify and reimburse PLAINTIFFS and the CALIFORNIA
18 LABOR SUB-CLASS members for these expenses as an employer is required to do under
19 the laws and regulations of California.

20 99. PLAINTIFFS therefore demands reimbursement for expenditures or losses
21 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
22 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
23 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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1 **EIGHTH CAUSE OF ACTION**

2 **For Failure to Pay Wages When Due**

3 **[Cal. Lab. Code §§ 201, 202, 203]**

4 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 100. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 101. Cal. Lab. Code § 200 provides that:

10 As used in this article:

11 (a) "Wages" includes all amounts for labor performed by employees of every
12 description, whether the amount is fixed or ascertained by the standard of time,
13 task, piece, Commission basis, or other method of calculation.

14 (b) "Labor" includes labor, work, or service whether rendered or performed under
15 contract, subcontract, partnership, station plan, or other agreement if the labor to
16 be paid for is performed personally by the person demanding payment.

17 102. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
18 an employee, the wages earned and unpaid at the time of discharge are due and payable
19 immediately."

20 103. Cal. Lab. Code § 202 provides, in relevant part, that:

21 If an employee not having a written contract for a definite period quits his or her
22 employment, his or her wages shall become due and payable not later than 72
23 hours thereafter, unless the employee has given 72 hours previous notice of his
24 or her intention to quit, in which case the employee is entitled to his or her wages
25 at the time of quitting. Notwithstanding any other provision of law, an employee
26 who quits without providing a 72-hour notice shall be entitled to receive payment
27 by mail if he or she so requests and designates a mailing address. The date of the
28 mailing shall constitute the date of payment for purposes of the requirement to
provide payment within 72 hours of the notice of quitting.

104. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
SUB-CLASS Members' employment contract.

105. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
who is discharged or who quits, the wages of the employee shall continue as a
penalty from the due date thereof at the same rate until paid or until an action
therefor is commenced; but the wages shall not continue for more than 30 days.

106. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages, to these employees who actually worked overtime, as required by law.

107. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFFS demand up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- 1 B) Compensatory damages, according to proof at trial, including compensatory
2 damages for minimum and overtime compensation due PLAINTIFFS and the
3 other members of the CALIFORNIA LABOR SUB-CLASS, during the
4 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
5 at the statutory rate;
- 6 C) Meal and rest period compensation pursuant to California Labor Code Section
7 226.7 and the applicable IWC Wage Order;
- 8 D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 9 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
10 in which a violation occurs and one hundred dollars (\$100) per each member of
11 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
13 an award of costs for violation of Cal. Lab. Code § 226;
- 14 F) The amount of the expenses PLAINTIFFS and each member of the
15 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
16 plus interest, and costs of suit; and,
- 17 G) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
18 CLASS as a penalty from the due date thereof at the same rate until paid or until
19 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

20 3. On all claims:

- 21 A) An award of interest, including prejudgment interest at the legal rate;
- 22 B) Such other and further relief as the Court deems just and equitable; and,
- 23 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
24 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
25 §2802.
- 26

27 Dated: July 27, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demands a jury trial on issues triable to a jury.

Dated: July 27, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

EXHIBIT #5

1 Robin Samuel (SBN 173090)
2 Teresa H. Michaud (Bar No. 296329)
3 Stephanie P. Priel (Bar No. 313085)
4 Sara Victoria M. Pitt (Bar. No. 317611)
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14 Attorneys for Defendant
15 PROMETRIC LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

15 SARAH ARMSTRONG and ROBERT
16 WALLACE, individuals and on behalf of
17 themselves and those similarly situated,

18 Plaintiffs,

19 vs.

20 PROMETRIC LLC, a Limited Liability
21 Company, and DOES 1 through 50,
22 inclusive,

23 Defendant.

Case No. 20STCV29967

**SUPPLEMENTAL DECLARATION
OF ROBIN SAMUEL REGARDING
CY PRES**

[Cal. Code Civ. Proc. § 382.4]

Judge: Hon. Maren E. Nelson
Dept.: SS-17

Date: January 5, 2021
Time: 9:00 a.m.

Complaint Filed: 8/07/2020

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EXHIBIT #6

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

**SARAH ARMSTRONG and ROBERT
WALLACE, individuals and on behalf of
themselves and those similarly situated,**

Plaintiffs,

v.

**PROMETRIC LLC, a Limited Liability
Company, and DOES 1 through 50,
inclusive,**

Defendants.

Case No.: 20STCV29967

**DECLARATION OF ERIC SPRINGER ON
BEHALF OF SIMPLURIS, INC.
(PROPOSED SETTLEMENT
ADMINISTRATOR)**

**Hearing Date: TBD
Hearing Time: TBD**

**Judge: Hon. Maren E. Nelson
Dept.: SS-17**

**Action Filed: August 7, 2020
Trial Date: Not set**

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I, Eric Springer, declare as follows:

1. I am the Director of Project Management for Simpluris Inc., (“Simpluris”). I am over 18 years of age and authorized to make this declaration on behalf of Simpluris and myself, and make this declaration based upon my own personal knowledge.

2. Simpluris has extensive experience in class action matters, having provided services in litigation settlements involving antitrust, securities fraud, property damage, employment discrimination, minimum wage and hour, product liability, insurance and consumer issues. Simpluris specializes in settlement consultation, data management, legal notification, call center support, claims processing and reporting.

3. We have provided notification and/or claims administration services in more than 5,000 Of these, more than 3,000 were Labor & Employment cases. Over the past 10 years, Simpluris has approximately \$600 million in settlements. A true and correct copy of Simpluris' company ("Simpluris Resume") is attached as Exhibit A.

4. Simpluris is committed to the security of not only our data and information but the Parties' and information as well. We have not experienced any security breaches in our company history. A correct copy of our SOC 2 Certification demonstrating our commitment to security is attached as B. Additionally, Simpluris maintains insurance coverage in the amount of \$3,000,000 for Errors and Omissions.

5. Simpluris does not have any affiliation with counsel for this matter.

6. Simpluris has been selected by counsel to serve as the class action Settlement Administrator for this case. In this capacity, Simpluris will be charged with, among other responsibilities: (a) providing Notice to the Class Members; (b) receiving undeliverable Notice Packets; (c) receiving and responding to questions from Class Members; (d) establishing a fund for authorized claimants; (e) making individual settlement payments, distributing funds, and tax-reporting following final approval; (f) issuing settlement checks; (g) answering questions from Class Members;. Simpluris has agreed to represent the case for a fixed fee of \$6,500. If the scope of work increases or decreases significantly,

1 Simpluris will inform the parties and request approval of an adjustment, whether increased or decreased
2 respectively, to the capped costs. Attached hereto as Exhibit C is a copy of Simpluris' bid for
3 administering this matter.
4

5 I declare under penalty of perjury under the laws of the State of California that the above is true
6 and correct and that this Declaration was executed this 19th day of August, 2021, in Melbourne, Florida.
7
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10 _____
Eric Springer
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Exhibit A

simpluris

Class Action Settlement Administration

ABOUT SIMPLURIS

Simpluris, Inc. opened its doors in January 2007 as a class action settlement administration firm. A small collection of professionals proficient in class action settlement administration, marketing, direct mail development, and database design, with Troy Hoffman at its helm, began building the client-centric company with less than 10 clients. Over the course of 10 years, Simpluris has grown to 55+ employees, offices in 3 states, 5000+ clients. The success has derived from the construction of a cohesive team built with enthusiasm and vision. Simpluris is continually advancing its services including notification campaigns, case administration, data management, funds distribution and tax reporting persistently seeking modern techniques that offer efficiency and cost effective solutions to our clients. Simpluris will launch LiveCase™ (client centric software) shortly, which will take class action settlement administration to a whole new level.

Inc Magazine recently ranked Simpluris #171 on its 30th annual Inc. 500 an exclusive ranking of the nation's fastest growing private companies.

Founder, Troy Hoffman, has been a guest lecturer and panel member in the industry on class action related topics, including online claims filing, class notice campaigns, and other relevant issues within class action administration. He has spoken at many seminars including:

- California 17200 Conference
- Class Action & UCL Conference
- Nixon Peabody Luncheon
- Class Action Litigation Summit
- Bridgeport symposium's, Regular Panel Member
- CASD-Panel Member

Our approach is to provide a high level of customer service to all our clients and to use automation to the fullest to provide economical as well as accurate results and work product.

Clients receive support from our experts, who include attorneys, accountants, IT experts and communications professionals with a deep understanding of the unique demands of complex administration for class action, mass tort, and international collective redress.

Every case is assigned a dedicated team of professionals that oversees and coordinates all aspects of the engagement. Our integrated approach assures the highest levels of quality, accuracy and timeliness to meet clients' deadlines.

Simpluris has successfully administered cases in a complete scope of different practice areas. Our proven procedures and best practices provide successful outcomes from start to finish. Our IT professionals work full time to upgrade our case management technology to advance our commitment to our clients. Our far-reaching experience has helped us effectively administer cases in Wage and Hour, retail, commercial, Consumer, liability, and Consumer Fraud.

AREAS OF PRACTICE

Antitrust	Employment/ADA	Personal Injury
Banking	Environmental	Product Liability
Civil Rights	Finance	Securities
Consumer/Product	Healthcare	Specialty Areas
Coupon	Insurance	Trade
Discrimination	Mass Tort	Wage and Hour

SERVICES AND SOLUTIONS

Call Center	Consulting	Notice of Class Certification
Case Administration	Data Management	Pre-Certification
Case Notification	Discovery Campaigns	Settlement Mailings
Case Websites	Fund Distribution and Tax	Statistical Analysis
Claims Processing	Reporting	Statistics Gathering
Class Member Tracking	Mailing Campaigns	

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

Simpluris

Class Action Settlement Administration

current CASE LIST

Acheson v Giorgio Armani

Case Number: 107 CV 099461

PLAINTIFF - Initiative Legal Group LLP

Mónica Balderrama, Esq., Shawn Westrick, Esq.

DEFENSE - Jackson Lewis LLP

Punam Sarad, JoAnna Brooks

Alberto v GMRI, Olive Garden

Case No: 2:07-CV-01895-WBS-DAD

PLAINTIFF - Westrup Klick

Phillip R. Poliner

DEFENSE - Paul, Hastings, Janofsky & Walker LLP

Jan E. Eakins

Alvarez v Malibu Restaurant

Case No: BC 376311

PLAINTIFF - Hamner Law Offices PC

Christopher J. Hamner

DEFENSE - Landegger Baron Lavenant

Brian E. Ewing

Anderson v DriveTime

Case No: BC398475

PLAINTIFF - Initiative Legal Group

Mark Yablonovich, Marc Primo

DEFENSE - Paul Hastings Janofsky & Walker

Elena Baca, Ryan Derry

Arias v Praxair Distribution

Case No: CGC 08-474506

PLAINTIFF - Keller Grover LLP

Eric A. Grover, Esq., Jade Butman, Esq.

DEFENSE - Littler Mendelson, P.C.

Marlene S. Muraco, Esq.

**Arnall v North American
Merchandising Service, Inc.**

Case No: 06AS01439

PLAINTIFF - Shimoda Law Corp.

Galen T. Shimoda

DEFENSE - Jackson Lewis LLP

Dale R. Kuykendall, Nathan W. Austin

Dillingham & Murphy, LLP

William Gaus

Balint v Chico's Fas, Inc.

Case No: BX369191

PLAINTIFF - Jennifer Kramer Legal

Judith Wiederhorn, Jennifer Kramer

DEFENSE - Jackson Lewis LLP

David S. Bradshaw

Blackner v Ameripark

Case No: BC363075

PLAINTIFF - Initiative Legal Group

Mark Yablonovich

DEFENSE - Littler Mendelson

Tony Ray Skogen

Bodiford v GMRI, Red Lobster

Case No: HG 08407051

PLAINTIFF - Westrup Klick, LLP

Phillip Poliner, Esq

DEFENSE - Paul, Hastings, Janofsky &

Walker LLP

Jan E. Eakins, Esq

Booker v Tanintco

Case No: BC 349267

PLAINTIFF - Law Offices of Jared E. Peterson

Jared E. Peterson, Esq.

Aiman-Smith & Marcy

Reed W.L. Marcy, Esq.

DEFENSE - Sedgwick, Detert, Moran & Arnold LLP

Leonora M. Schloss, Esq., Aaron N. Colby, Esq.

Boyce v Michael Kors

Case Number: 37-2008-00093848-CU-BT-CTL

PLAINTIFF - Fineman & Associates

Neil B. Fineman

DEFENSE - Proskauer Rose LLP

Lary Alan Rappaport

Boydston v ExxonOil

Case Number: 1267419

PLAINTIFF - Gilbert & Sackman, A Law Corporation

Robert A. Cantore, Adrian Barnes

DEFENSE - Sheppard, Mullin, Richter & Hampton, LLP

Jeffrey A. Dinkin, Aaron W. Heisler

Brentwood Travel Services v DCT

Case No: 03CC-002857

PLAINTIFF - Korein Tillery LLC

Christopher A. Hoffman, Steven Katz, Douglas R. Sprong

DEFENSE - not disclosed

Brior v AE Retail West, LLC

Case No: CGC 06-455422

PLAINTIFF - Keller Grover, LLP

Eric Grover, Jade Butman

DEFENSE - Rutan & Tucker, LLP

Brian C. Sinclair

Broome v Google**Case No: 108CV112386****PLAINTIFF** – *Rukin, Hyland, Doria & Tindall LLP*
*Peter Rukin***DEFENSE** – *Paul, Hastings, Janofsky & Walker LLP*
*Thomas E. Geidt***Butcher v Westport Insurance Corp.****Case No: BC 335874****PLAINTIFF** - *Kroll Law Corporation*
*Gerald Kroll***DEFENSE** - *Harrington, Fox, Dubrow & Canter*
*Mark Flory, James Lo***Cabrera v HVACExchange****Case No: 37-2008-00084851-CU-OE-CTL****PLAINTIFF** - *Cadena Churchill LLP*
*Raul Cadena***DEFENSE** - *Law Offices of Roy R. Withers, Esq.*
*Roy Withers***Camacho v Herbalife****Case No: BC376236****PLAINTIFF** - *Diversity Law Group, A.P.C.*
*Larry Lee***DEFENSE** - *Sheppard Mullin Richter & Hampton, LLP*
*Richard J. Simmons, Jason W. Kearnaghan***Campos v HWBCarwash****Case No: BC378990****PLAINTIFF** – *Lavi & Ebrahimian, LLP*
*N. Nick Ebrahimian, Joseph Lavi, Jordan D. Bello***DEFENSE** - *Jackson Lewis LLP*
*Mia Farber, Chad Bernard***Caponera v Knox & Associates****Case No: 06AS03693****PLAINTIFF** – *Wynne Law Firm*
*Edward J. Wynne***DEFENSE** – *Jackson Lewis LLP*
*Cary G. Palmer***Casanova v Gregg Industries, Inc****Case No: BC 337037****PLAINTIFF** - *Appleton, Blady & Magnanimo*
*Benjamin Blady***DEFENSE** - *Berry & Perkins*
*Kevin Lussier***Cash v McCormick****Case No: BC 374352****PLAINTIFF** – *Kingsley & Kingsley*
George Kingsley, Eric Kingsley, Gregory Givens
DEFENSE – *Atkinson, Andelson, Loya, Ruud & Romo*
*Ann K. Smith***Castro v White Cap****Case Number: CGC 05-446144****PLAINTIFF** - *Vinick Law Firm*
*Sharon Vinick**Kletter & Peretz*
Yosef Peretz
DEFENSE - *Orrick, Herrington & Sutcliffe LLP*
*Joseph C Liburt, Amira Day***Cavanaugh v SCPMG****Case No: BC 354246****PLAINTIFF** - *Appleton, Blady & Magnanimo, LLP*
*I. Benjamin Blady***DEFENSE** - *Seyfarth Shaw*
*Thomas R. Kaufman***Centurioni v City and County of San Francisco****Case No: C0701016JSW****PLAINTIFF** - *Vinick Law Offices*
*Sharon Vinick**Shea Law Offices*
Mary J. Shea
Boxer & Gerson LLP
Leslie F. Levy and Darci Burrell
DEFENSE – *City Attorney's Office*
*Dennis J. Herrera, Elizabeth Salveson, Jonathan Rolnick, Rose-
Ellen H. Fairgrieve***Chandler v Mi Piacé****Case No: BC 337780****PLAINTIFF** - *Hawkins & Sofonio*
Greg Mauro
DEFENSE - *Sheppard, Mullin, Richter & Hampton*
*Daniel J. McQueen***Chavez v CEC Entertainment, Inc****Case Number: BEC380996****PLAINTIFF** - *Lavi & Ebrahimian*
Joseph Lavi
DEFENSE - *Bander Law Firm*
*Cathe Caraway-Howard***Chiaramonte v Pitney Bowes****Case No: 06CV1507RNL5****PLAINTIFF** - *Cohelan & Khoury*
Michael Singer, Diana Khoury
DEFENSE - *Seyfarth Shaw*
*Raymond Kepner, Tom Kaufman,
Ayesha Atttoh***Clark v Commerce West Insurance****Case No: RG06269869****PLAINTIFF** – *Duckworth Peters Lebowitz, LLP*
Mark Peters
DEFENSE – *Sheppard Mullin Richter & Hampton*
Jennifer Redmond

Clymer v Candle Acquisition

Case No: BC328765

PLAINTIFF – Initiative Legal Group, LLP

Mark Yablonovich, Marc Primo, Payam Shahian

DEFENSE – Carter Carter Fries & Grunschlag

Dov M. Grunschlag

Colbert v American Home Craft Inc.

Case No: 05AS05012

PLAINTIFF - Shimoda Law Group

Galen T. Shimoda

DEFENSE - Johanson Berenson LLP

Douglas Rubel

Cook v TwentyNinthStreetCafe

Case Number: LASC BC384829

PLAINTIFF - The Law Offices of Stephen Glick

Stephen Glick; Anthony Jenkins

DEFENSE - Musick, Peeler & Garrett, LLP

Elaine M. Vukadinovich

Corado v Goodyear

Case No: RCV 095476

PLAINTIFF - Spiro Moss Barness, LLP

Justian Jusuf, Dennis Moss

Law Offices of Sahag Majarian II

Sahag Majarian II

DEFENSE - Non-Disclosed

Cota v Las Olas

Case No: 37-2007-00055931-CU-OE-NC

PLAINTIFF – Hamner Law Offices

Christopher Hamner, Kimberly Westmoreland

DEFENSE – Seyfarth Shaw

Kimberly M. Foster

Crosby v Chevy's, Inc.

Case No: 06AS02420

PLAINTIFF - Law Offices of Michael Carver

Michael Carver

DEFENSE - Morgan, Lewis, Bockius

Barbara Miller

Cuevas v Vasquez Company

Case No: RIC 497307

PLAINTIFF – Gould & Associates

Michael A. Gould

DEFENSE – Hodel, Briggs, Winter LLP

Glenn L. Briggs

D'Asero v Home Loan Center

Case No: SACV 08-0384 RSWL (JWJx)

PLAINTIFF – Mower, Carreon, & Desai, LLP

Jon R. Mower, James A. Burton

DEFENSE – Sheppard, Mullin, Richter, & Hampton, LLP

Greg S. Labate, Matthew M. Sonne

Dao v 3M Company

Case No: CV-08-04554 VBF (AGRx)

PLAINTIFF - James Hawkins

Gregory Mauro

DEFENSE - Shea Stokes Roberts & Wagner

Maria Roberts

Davenport v Union Bank of CA

Case No:2:07-CV-00001 FMC

PLAINTIFF – Keller Grover

Eric Grover

Thierman Law Firm

Mark R. Thierman

DEFENSE – Morgan, Lewis, & Bockius

Rebecca Eisen, John Battenfeld

Davilla v Beckman Coulter

Case Number: 07CC01347

PLAINTIFF - James Hawkins

Greg Mauro

DEFENSE -Sheppard Mullin

Greg Labate

Davis v Kohls Department Stores, Inc

Case No: BC327426/BC341954

PLAINTIFF – Righetti Law Firm, PC

John Glugoski, Matt Righetti

Scott Cole & Associates

Kevin R. Allen, Scott Edward Cole

DEFENSE – Jackson Lewis, LLP

Scott Lacunza, Frank Liberatore

Dibel v Jenny Craig

Case No: 06cv2533

PLAINTIFF - Class Action Litigation Group

Rene Barge, Katie Odenbreit

DEFENSE - Jackson DeMarco Tidus Petersen & Peckenpough

Paul Van Hoomissen, Gregory G. Petersen, Joshua Rittenberg

DLSE v CAM Commerce Solutions

Case No: N/A

PLAINTIFF - DLSE

David Gurley

DEFENSE - Proskauer Rose LLP

Art Silbergeld

DLSE v SierraCascade

Case No: 35-65292/225

PLAINTIFF - DLSE

Deborah Graves

DEFENSE - DLA Piper US LLP

Amy Beckstead

Ellerd v County Of LA

Case No: CV 05-122/cv 05-4200

PLAINTIFF – *Megan Richmond*

DEFENSE – *Sheppard, Mullin, Richter, & Hampton, LLP*
Geoffrey D. Deboskey

Eng v PQBeverlyHills

Case No: BC391451

PLAINTIFF - *Nunes Law Group*

Glenn Nunes

Hamner Law Offices

Chris Hamner, Kimberly Westmoreland, Marie Bolanos

DEFENSE - *Snell & Wilmer*

Christy Joseph, Tiffanny Brosnan

Faris v Bal Seal

Case Number: 30-2008-00180022

PLAINTIFF - *Spiro, Moss, Barness, LLP*

Dennis Moss

The Law Office of Justian Jusuf

Justian Jusuf

DEFENSE - *Tredway, Lumsdaine & Doyle*

Shannon Marie Jenkins

Farrell v Hamlet Group, Inc.

Case No: BC 378411

PLAINTIFF - *Hamner Law Offices, LLC*

Christopher J. Hamner

DEFENSE - *Garrett & Tully, LLP*

Efren Compean

Flores v CVS

Case No: 2:07-cv-05326-FMC-Ex

PLAINTIFF – *Initiative Legal Group, LLP*

Monica Balderrama, Marc Primo, Linh Hua, Shawn Westrick,
Mark Yablanovich

DEFENSE – *Sheppard, Mullin, Richter & Hampton, LLP*

Jennifer Zargarof & Douglas R Hart

Franco v Ecology Autoparts, Inc

Case No: GIC840600

PLAINTIFF - *Law Offices of Paul D. Jackson*

Paul D. Jackson

Cadena Churchill, LLP

Raul Cadena

DEFENSE - *Lewis Brisbois Bisgaard & Smith LLP*

Paul F. Sorrentino

Frank v eCost

Case No: BC374820

PLAINTIFF – *Westrup Klick, LLP*

Philip Poliner

DEFENSE – *Jones Day*

Steven M. Zadravez

Frost v Freeway Insurance

Case No: GIC874251

PLAINTIFF – *Cohelan & Khoury*

Isam C. Khoury, Michael D. Singer, Diana M. Khoury, Alexander I. Dychter

DEFENSE – *Michelman & Robinson, LLP*

Sanford L. Michelman, Mona Z. Hanna, Todd H. Stitt

Fuller v Kelly Services

Case No: BC296800

PLAINTIFF – *Gould & Associates*

Aarin Zeif, Michael L. Gould

Law Offices of Daniel G. Emilio

Daniel G. Emilio

DEFENSE – *Sheppard, Mullin, Richter & Hampton*

Geoff D. DeBoskey

Galicia v Pfinish Koncepts, Inc

Case Number: BC375293

PLAINTIFF - *Kesluk & Silverstein*

Douglas N Silverstein

DEFENSE - *Carlton DiSante & Freudenberger*

Leigh A White & Dorothy A Black

Galtie v ARSNationalServices

Case No: 37-2007-00056871 CU OE NC

PLAINTIFF - *Initiative Legal Group*

Linh Hua, Scott Leviant, Payam Shanian, Marc Primo

DEFENSE - *Luce Forward Hamilton & Scripps*

Kathryn A. Bernert

Garcia v Kao

Case No: 05CC05679

PLAINTIFF - *Gibson Dunn & Crutcher*

Nicola Hanna, Kevin Roosevelt, Kelly Leggio, Lise Johnson

Public Law Center

Kenneth Babcock, Gary McGaha

DEFENSE - *Law Offices of David S. W. Fang*

David S. W. Fang

Law Offices of David Alan Cooper

David Alan Cooper

Law Offices of Stanley Friedman

Stanley Friedman

Howrey LLP

Russell B. Hill, Jesse D. Mulholland

Pasternak, Pasternak & Patton

David J. Pasternak

Theodora Oringher Miller & Richman

James Godes, Joseph Preis

Geerhart v California Insurance Guarantee Association

Case No: 357078BC

PLAINTIFF - *The Law Offices of Timothy B McCaffrey*

Timothy McCaffrey Jr.

DEFENSE – *Locke, Lord, Bissell & Liddell LLP*

Nina Huerta, Eduardo Martorell, Guerry Collins

Ginsberg v Pinecrest Schools

Case No: BC 316722

PLAINTIFF - Daniels, Fine, Israel, Schonbuch & Lebovits
Scott Brooks, Paul Fine

Law Offices of Stephen Glick

Stephen Glick

DEFENSE - Christensen, Glaser, Fink, Jacobs, Weil & Shapiro,
LLP

Mark Lynch

Gonzalez v Home Loan Center

Case No: CV06-5007 RSWL (JWJx)

PLAINTIFF - Initiative Legal Group, LLP

Marc Primo, Joseph Cho, Shawn Westrick

DEFENSE - Sheppard Mullin Richter & Hampton LLP

Greg S. Labate, Matthew M. Sonne

Granados v Dow Key

Case No: 56-2007-00304253-CU-OE-VTA

PLAINTIFF - Gulledge Law Group

Linda J. Gulledge, Kelly Woody Gulledge

DEFENSE - Nordman, Cormany, Hair & Compton LLP

Karen L. Gabler

Guerra v L'Occitane

Case No: BC373587

PLAINTIFF - Initiative Legal

Mark Yablonovich, Marc Primo, Matthew Theriault, Dina Livits

DEFENSE - Jackson Lewis LLP

David Bradshaw

Guerrero v Beacon Bay

Case No: 06CC00111

PLAINTIFF - Law Offices of Jerry D. Underwood

Jerry D. Underwood Esq

Diefer Law Group, P.C.

Marcelo A. Dieguez, Esq

DEFENSE - Carlton DiSante & Freudenberg LLP

Timothy M. Fruedenberger LLP

Hall v Best Buy

Case No: 265-2005-02271

PLAINTIFF - EEOC

DEFENSE - Robins Kaplan Miller & Ciresi LLP

Janet C. Evans, Kelly K. Pierce

Halawanji v Advantage Guard

Case No: 06CC00158

PLAINTIFF - Gould & Associates

Michael Gould, Aarin Zeif

DEFENSE - Atkinson, Andelson, Loya, Ruud & Romo, APC

Susan Steward

Hansen v CeliteCorp

Case Number: 1250371

PLAINTIFF - Gilbert & Sackman, A Law Corporation

Robert A. Cantore, Adrian Barnes

DEFENSE - Sheppard, Mullin, Richter & Hampton, LLP

Jeffrey A. Dinkin, Aaron W. Heisler

Hanzy v Mac Mall

Case No: BC373935

PLAINTIFF - Westrup Klick, LLP

Phillip R. Poliner, Esq.

DEFENSE - Jones Day

Steven M. Zadravec, Esq.

Hashimoto v Abercrombie & Fitch Co.

Case No: BC 354479

PLAINTIFF - Khorrami, Pollard & Abir LLP

Robert (Bob) Drexler Jr

The Quinsberry Law Firm

John N. Quisenberry

DEFENSE - Vorys, Sater, Seymore and Pease, LLP

Mark Knueve

Harris v Kiddie Kandids

Case Number: C08-00852 MEJ

PLAINTIFF - Law Office of Randall Crane

Randall Crane

DEFENSE - Desouza Law Offices

Jacqueline Desouza

Haywood v Tyler Restaurants, Inc.

Case No: 06CC00085

PLAINTIFF - Gerald MacRae

DEFENSE - Stradling, Yocca, Carlson & Rauth

John Cannon, Amy Williams

Hernandez v Angeles ARC

Case No: BC347952

PLAINTIFF - Law Offices of Ellyn Moscovitz

Ellyn Moscovitz, Sharon Seidenstein

DEFENSE - Law Offices of Steven Kramer

Steven Kramar

Hernandez v Brink's, Inc.

Case No: BC360488

PLAINTIFF - The Cooper Law Firm P.C.

Scott Cooper

The Carter Law Firm

Roger L. Carter

Jose Garay A.P.C

Jose R. Garay

DEFENSE - Crowell & Morning LLP

Jeff Pagano, Ira Saxe, Stafford Woodley, Marc Romero, Stephan
P. Rice

Herron v Cool Cuts 4 Kids

Case No: BC384527

PLAINTIFF - Gould & Associates

Michael A. Gould

Aarin A. Zeif

DEFENSE - Littler Mendelson

Diane L. Kimberlin

Hill v SullivanAG**Case No: BC378222**PLAINTIFF - *Initiative Legal**Linh Hua, Scott Leviant*DEFENSE - *Chavos and Rao**Laurie Rao***Hyatt v California Sullivan****Case No: INC 068594**PLAINTIFF - *James H. Cordes, Attorney at Law**James H. Cordes*DEFENSE - *Carlton DiSante & Freudenberger, LLP**Leigh Ann White & Timothy Freudenberger***Ingraham v Orchard Supply Hardware****Case No: 457004**PLAINTIFF - *Scott Cole & Associates APC**Scott Edward Cole, Matthew Bainer & Clyde H. Charlton*DEFENSE - *Littler Mendelson PC**Dennis M. Brown, Michelle B. Heverly & Erica H. Kelley***Janicki v Lane Bryant****Case No: BC 374877**PLAINTIFF - *Connor & Sargent PLLC**Stephen P. Connor**Anne-Marie E. Sargent*DEFENSE - *Morgan Lewis & Bockius**John S. Battenfeld, Donna Mo, Albert Huang***Jones v Right Away Redy Mix****Case No:RG 07331067**PLAINTIFF - *Law Offices of Sohnen & Kelly**Harvey Sohnen, Esq., Patricia Kelly, Esq.*Defense - *Wiley, Price, & Radulovich, LLP**Joseph E. Wiley, Esq., Ian O. Fellerman, Esq.***Kaplan v Siemens Maintenance Services****Case No: BC 328900**PLAINTIFF - *Initiative Legal Group, LLP**Joseph Cho, Greg Yu*DEFENSE - *Morrison & Foerster**Samantha Goodman***Keo v North Coast Couriers****Case No: RG 06-0251806**PLAINTIFF - *Hinton, Alfert, and Sumner**Aaron Kaufman**Cohelan & Khoury**Christopher Olsen, Michael D. Singer**Liberation Law Group**Arlo G. Uriarte**Law Offices of Ricardo J. De Rosa**Ricardo J. De Rosa*DEFENSE - *Law Office of Nina Yablok**Nina Yablok**Littler Mendelson**Theodora Lee***Keplinger v California Pizza LLC****Case No: 07CEGC01534**PLAINTIFF - *Law Office of Michael Carver**Michael Carver*DEFENSE - *Fisher & Phillips, LLP**John Lattin***Kinz v SpencerGifts****Case Number: 07AS03539**PLAINTIFF - *Law Offices of Michael Carver**Michael Carver, Michelle Lunde*DEFENSE - *Orrick, Herrington & Sutcliffe LLP**Allison Pitigoi, Julie Totten***Klostermann v OCE Business Services****Case No: BC311001**PLAINTIFF - *Graves & Associates**Allen Graves*DEFENSE - *Jackson Lewis, LLP**Mia Farber, Dean Rocco***Koehler/Aho v BankoftheWest****Case Number: CGC-060 458611**PLAINTIFF - *Initiative Legal Group, LLP**Gregory Yu*DEFENSE -*Orrick, Herrington & Sutcliffe, LLP**Andrew Livingston***Koehler v Honeywell****Case No: RG 05213466**PLAINTIFF - *McCurdy & Ku**Gregg L. McCurdy, Gaetano M. Fong*DEFENSE - *Paul Hastings, Janofsky & Walker**M. Kirby C. Wilcox, Saidah M. Grayson***Krzesniak v Budget Rent A Car****Case No: C 05-5156 MEJ**PLAINTIFF - *Rukin Hyland Doria & Tindall LLP**Steven M. Tindall, Peter Rukin*DEFENSE - *Littler Mendelson**Jody A. Landry**Arena Hoffman LLP**Michael Hoffman***Kunz v Sunset Cresent****Case No: BC382004**PLAINTIFF - *Jennifer Kramer Legal**Jennifer Kramer*DEFENSE - *Proskauer Rose LLP**Robert H. Horn, Anthony J. Oncidi***Lakso v UHS of Delaware, Inc.****Case No: BC 342312**PLAINTIFF - *Law Office of Joseph Antonelli**Joseph Antonelli, Janelle Carney*DEFENSE - *Cotkin, Collins & Ginsburg**William Naeve, Ellen Tipping, Robert Wilson*

Lanzarone v WSA Security, Inc.**Case No: BC345891**PLAINTIFF - *Law Offices of Herbert Hafif**Gregg Hafif, Miguel Caballero, Farris Ain*DEFENSE - *Loeb & Loeb**Mark Campbell, Allan Edmiston, Erin Smith***LaPlante v Pomeroy Investments****Case Number: BC 379692**PLAINTIFF - *Hamner Law Offices**Christopher Hamner*DEFENSE - *Levinson Arshonsky & Kurtz**James Cooper***Lauzon v Club Monaco****Case No: CGC-06-449963**PLAINTIFF - *Keller Grover, LLP**Eric A. Grover Esq., Jade Butman Esq.*DEFENSE - *Little Mendelson**Margaret Hart Edwards, Phillip L. Ross***Little v Brinker****Case No: 02 CC-003965**PLAINTIFF - *Korien Tillery, LLC**Steven Katz, Christopher A. Hoffman*DEFENSE - *McMahon Berger, PC**Robert Younger, McMahon Berger***Lopez v Little Caesars****Case Number: BC383640**PLAINTIFF - *Law Offices of Stephen Glick**Stephen Glick; Anthony Jenkins*DEFENSE - *Winston & Straw LLP**Benjamin M. Gipson/Maria Rodriguez***Lopez v Louis Vuitton****Case No: BC361116**PLAINTIFF - *Gould & Associates**Michael Gould, Aarin Zeif*DEFENSE - *Winston & Strawn LLP**Lee Paterson, Jessie Kohler, Emilie Woodhead***Mabry v Pete's Connection****Case No: 04CC00509**PLAINTIFF - *Cohelan & Khoury**Tim Cohelan, Michael Singer, Sam Khoury, Diana Khoury**Nicole Durant, Esq Attorney at Law*DEFENSE - *Phillip Silverman, Esq. Attorney at Law***Mahoney v AT&T****Case No: BC385361**PLAINTIFF - *Goldstien Demchack Baller Borgen & Dardarian**Morris J. Baller, Joseph E. Jaramillo*DEFENSE - *Pillsbury, Winthrop, Shaw, Pittman LLP**Paula M. Weber, Lara-Beye Molina***Mares v BFS****Case No: BC375967**PLAINTIFF - *Initiative Legal Group, LLP**Marc Primo, Matthew Theriault, Orlando Arellano*DEFENSE - *Rutan & Tucker, LLP**Ernest W Klatte, III, Summer Young-Agriesti***Marino v PinkTaco****Case Number: BC384498**PLAINTIFF - *Hamner Law Offices, APC**Christopher J Hamner*DEFENSE - *Proskauer Rose LLP**Robert H Horn***Martin v Home Savings Termite Control****Case No: BC372068**PLAINTIFF - *Jennifer Kramer Legal**Jennifer Kramer*DEFENSE - *Freedman & Taitelman**David Marmorstein***Martinez v Bank of the West****Case No: CGC-06-454959**PLAINTIFF - *Rukin Hyland Doria & Tindall, LLP**Peter Rukin & John F. Hyland**Law Offices of Greg Mayeda**Greg Mayeda*DEFENSE - *Orrick Herrington & Sutcliffe, LLP**Andrew Livingston, Kristen M. Jacoby & Patricia Gillette***Massie v Wild Oats****Case No:BC369633**PLAINTIFF - *Law Offices of Stephen Glick**Stephen Glick, Esq.**Daniels, Fine, Israel, Shonbuch & Lebovits LLP**Paul Fine, Scott Brooks, Craig Momita**Law Offices of Ian Herzog**Ian Herzog*DEFENSE - *Jackson Lewis LLP**Frank M. Liberatore, Esq. Debbie Ibrahim, Esq. & Aryn J. Sobo, Esq.***Mathistad v Einstein Noah Restaurant****Case No: 37-2007-74998-CU-IE-CTL**PLAINTIFF - *Righetti Law Firm, P.C.**Matthew Righetti, Esq, John Glugoski, Esq**Lorens & Associates, APLC**Tracee Lorens**Cadena Churchill, LLP**Raul Cadena*DEFENSE - *Holme Roberts & Owens, LLP**Donald L. Samuels, Elizabeth H. Murphy, David Ball*

McCall Selbst v Labor Ready**Case No:** BC289925**PLAINTIFF** – *The Quisenberry Law Firm**John Quisenberry, Robert J. Drexler***DEFENSE** – *Perkins Coie, LLP**David Ongaro***McCarty v CJK Associates****Case No:** FCS028379**PLAINTIFF** – *Law Offices of Michael L. Carver**Michael Carver***DEFENSE** – *Jackson Lewis**David S. Bradshaw, Cary Palmer***McLaughlin v Waste Management****Case No:** 06C 0100**PLAINTIFF** – *Appleton, Blady & Magnanimo**Benjamin Blady***DEFENSE** – *McNamara, Spira & Smith**Kirsten Hicks Spira***Merino v Nations Pizza Products****Case No:** 1:07-CV-632**PLAINTIFF** – *Werman Law Office, P.C.**Douglas M. Werman***Defense** – *Jones Day**Michael J. Gray, Michael S. Ferrell**Paul Hastings, Janofsky & Walker**Steven T. Catlett***NATION PIZZA'S COUNSEL***Earl Farkas***Mickelson v LaBou(WOGT)****Case Number:** 07AS02431**PLAINTIFF** – *Law Offices of Michael L. Carver**Michael L. Carver***DEFENSE** – *Knox, Lemmon, Anapolsky & Schrimp, LLP**Angela Schrimp de la Vergne***Mobley v Globeground North America, LLC****Case No:** BC 356051**PLAINTIFF** – *Initiative Legal Group**Matthew T. Theriault***DEFENSE** – *Morgan, Lewis & Bockius LLP**Jill Ann Porcaro***Molinar v Golden West Restaurants, Inc****Case No:** BC350154**PLAINTIFF** – *Law Offices of Michael Carver**Michael Carver***DEFENSE** – *Sheppard, Mullin, Richter & Hampton**Charles Barker, Geoffrey Deboskey***Moore v Check Cashing Place****Case No:** GIC 879665**PLAINTIFF** – *Hiden Rott & Oertle, LLP**Michael Ian Rott, Eric M. Overholt***DEFENSE** – *Littler Mendelson**Stacey E. James, Laura Strauss***Moore v Genesco****Case No:** RG06270570**PLAINTIFF** – *Keller Grover, LLP**Eric Grover, Jade Butman**Thierman Law Firm**Mark Thierman**Law Office of Steven L. Miller**Scott A. Miller, Steven L. Miller***DEFENSE** – *Morgan Lewis & Bockius, LLP**Eric Meckley***Mondragon v BTR, Inc****Case No:** BC 379380**PLAINTIFF** – *Hamner Law Offices, LLC**Christopher J. Hamner**Kimberly Westmoreland***DEFENSE** – *Van Vleck Turner & Zaller, LLP**Brian Van Vleck**Anthony Zaller***Morgan v The Avenue****Case No:** BC362191**PLAINTIFF** – *Initiative Legal Group**Mark Yablonovich, Marc Primo, Matthew T. Theriault, Lory N. Ishii***DEFENSE** – *Sheppard, Mullin, Richter & Hampton**Charles F. Barker, Ross A. Boughton***Morris v Lebhar Friedman****Case No:** 2:08-cv-07457-ODW-FMO**PLAINTIFF** – *Appleton, Magnanimo & Dean**Lauren Dean, Frank Magnanimo***DEFENSE** – *Paul, Hastings, Janofsky & Walker**Ryan Derry, Elena Baca***Muniz v Pilot Travel Centers****Case No:** 07-CV-003250-FCD-EFB**PLAINTIFF** – *Law Offices of Michael Carver**Michael Carver***DEFENSE** – *Littler Mendelson, PC**Jody Landry***Nelson v Pitney Bowes****Case No:** 06 05954 JSW**PLAINTIFF** – *Wynne Law Firm**Edward Wynne***DEFENSE** – *Littler Mendelson, PC**Annamary E. Gannon***Nerland v Caribou Coffee****Case No:** 05-1847 PJS/JJG**PLAINTIFF** – *Lockridge Grindal Nauen**Charles N. Nauen**Cuneo Gilbert & LaDuca**Jon Tostrud***DEFENSE** – *Fredrickson & Byron**Joseph M. Sokolowski*

Nevins v UHS of Delaware, Inc.**Case No: BC322077**PLAINTIFF - *Initiative Legal Group, LLP**Marc Primo, Shawn Westrick, Robert Byrnes*DEFENSE - *Cotkin, Collins & Ginsburg**William Naeve, Ellen Tipping, Robert Wilson***Nguyen v BDO****Case No: SACV07-1352 JVS MJGx**PLAINTIFF - *Kershaw, Cutter & Ratinoff, LLP**Stuart Talley*DEFENSE - *Morgan, Lewis & Bockius, LLP**Carrie Gonell***Njoku v Ecko****Case No: CGC 07-469480**PLAINTIFF - *Keller Grover LLP**Eric A. Grover*DEFENSE - *Proskauer Rose LLP**Enzo Der Boghossian, Harold M Brody***Noble v Sony****Case Number: BC372645**PLAINTIFF - *Trush Law Office**James M. Trush, Esq.**Tharpe & Howell**Robert M. Freedman, Esq., David S. Binder, Esq.*DEFENSE - *Mitchell Silberberg & Knupp LLP**Jeffrey L. Richardson***Novel v World Cafe Restaurant****Case Number: BC382068**PLAINTIFF - *Hamner Law Offices, LLC**Christopher J. Hamner*DEFENSE - *Lewis Brisbois Bisgaard & Smith, LLP**Steven G. Gatley, Lisa A. Gregorius***Omaley v IntelCorp****Case No: 108CV126813**PLAINTIFF - *Hinton, Alfert & Sumner**Aaron Kaufman**Rudy, Exelrod, Zieff & Lowe**Steve Zieff, Pat Goldman**Bruckner Burch**Richard Burch*DEFENSE - *Gilmore Diekmann Jr**Gilmore Diekmann***Ordaz v Rose Hills Mortuary****Case No: BC 386500**PLAINTIFF - *Initiative Legal Group**Marc Primo, Matthew Theriault, Dina Livhits*DEFENSE - *Gurnee and Daniels LLP**Stephen Gurnee, Nicholas Forestiere, David Daniels, John Mason***Ortega v Leslie Farms****Case No: GIN-031-417**PLAINTIFF - *California Rural Legal Assistance Foundation**Dorothy A. Johnson*DEFENSE - *Testa & Associates, LLP**Gregory J. Testa, Esq***Osorio v Land Forms Landscape****Case No: 07 CC 05683**PLAINTIFF - *Martinez & Associates**Jose Antonio Martinez*DEFENSE - *Crowell & Morning, LLP**Mark Romeo***Padilla v Two Lips****Case No: BC344476**PLAINTIFF - *Keller Grover, LLP**Jade Butman, Eric Grover*DEFENSE - *Anderson McPharlin & Connors, LLP**Glen Mortens, Stephen Harris***Palacio v International Extrusion****Case No: BC 376966**PLAINTIFF - *Myers & Siegel, PC**Michael Myers, Alan Sigel**Law Office of Matthew Taylor**Matthew Taylor*DEFENSE - *Little Mendelson, PC**Robert Blumberg***Palmer v Kohls Corporation****Case No: 37-2007-00076060-CU-MC-CTL**PLAINTIFF - *Bonnett, Fairbourn, Friedman & Balint, PC**Todd D. Carpenter*DEFENSE - *Call, Jensen & Ferrell**Matthew R. Orr***Palos v International Protection Service, Inc.****Case No: BC323209**PLAINTIFF - *Initiative Legal Group, LLP**Marc Primo, Greg Yu, Joseph Cho, Susan Cregg*DEFENSE - *Sedgwick, Detert, Moran & Arnold LLP**David M. Humiston, Leonora M. Schloss, Alexander Gareeb,**Aaron Colby***Pang v PitneyBowes****Case No: 1:07-cv-08557-RJH**PLAINTIFF - *Lipman & Plesur LLP**Robert Lipman, David Robins*DEFENSE - *Seyfarth Shaw LLP**Lorie Almon, Peter Walker, Chris Lowe*

Pelton v GTC**Case No: GIC863070****PLAINTIFF - Frantz Law Group APLC***James Frantz, Giles Townsend**Keegan, Macaluso & Baker, LLP**Patrick Keegan, Brent Jex**Law offices of Jodi Frantz**Jodi Frantz***DEFENSE - Drinker Biddle & Reath LLP***William Hanssen, Donald Beshada, Suzanne Stouder***The People of California v Zuma****Case No: BC349390****PLAINTIFF - L.A. City Attorney's Office***James Colbert, Steven Gold***DEFENSE - Hill, Farrer & Burrill LLP***Scott Gilmore. Esq.***Peralta v Olympic Garden****Case No: BC 358374****PLAINTIFF - Kesluk & Silverstein***Douglas Silverstein, Michael G. Jacob***DEFENSE - Rees Law Firm***Robert Rees***Perezchica v Eastco Int'l Corp.****Case No: 07 CH 04726****PLAINTIFF - Werman Law Office, P.C.***Douglas M. Werman***DEFENSE - Burke & White***Edmund Burke***Pietrzak v Joes Crab Shack****Case No: GIC 863846****PLAINTIFF - Cohelan & Khoury***Alex Dychter, Michael Singer***DEFENSE - Sheppard, Mullin, Richter & Hampton***Heather Clark, Ryan McCortney***Radinski v Apex Digital****Case No: 07 C 0571****PLAINTIFF - Penny, Nathan, Kahan & Associates***Ruth Irene Major***DEFENSE - Littler Mendelson***Lisa Schreter***Ramirez v eWork****Case No: 06-cv-00686-WDM-BNB****PLAINTIFF - Cafferty Faucher LLP***Anthony Fata***DEFENSE - Jacobs Chase***Ann Frick***Rava v Athletics Investment Group****Case Number: RG 06268693****PLAINTIFF - The Cartwright Law Group, APLC***Gregory Cartwright***DEFENSE - Jackson Lewis***Cary Palmer**Buchalter Nemer**George J. Stephan***Rava v Club Med Sales****Case No: 03CC09858****PLAINTIFF - Fuller Jenkins***Erik C. Jenkins**Flynn & Stillman**Philip Stillman**The Grant Law Firm**Joseph M. Grant***DEFENSE - McKay, Graham & de Lorimier***Michael Acain***Razo v C&D Zodiac****Case No: 07CC01373****PLAINTIFF - Spiro Moss LLP***Dennis Moss, Gregory Karasik***DEFENSE - Sheppard, Mullin, Richter & Hampton LLP***Greg Labate, Ruben Escalante***Recio v Labor Ready****Case No: BC289925****PLAINTIFF - The Cullen Law Firm, APC***Paul T. Cullen***DEFENSE - Perkins Coie, LLP***David Ongaro***Renteria v Pacer Cartage, Inc.****Case No: BC 292970****PLAINTIFF - Daniels, Fine, Israel, Shonbuch & Lebovits***Paul Fine, Scott Brooks**Law Offices of Stephen Glick**Stephen Glick***DEFENSE - Morgan, Lewis & Bockius***Larry Lawrence, Clifford Sethness***Ridley v Friar Tux****Case No: BC368902****PLAINTIFF - Law Offices of John F. Stewart***John F. Stewart***DEFENSE - Goldstein Law Firm***Charles Goldstein**Seyfarth Shaw LLP**Kenneth Sulzer***Ronn v Well Point Anthem BlueCross****Case No: 56-2008-00328601-CU-OE-VTA****PLAINTIFF - Initiative Legal Group***Marc Primo***DEFENSE - Seyfarth Shaw LLP***Eileen Zorc*

Rubio v New Century Mortgage**Case No:** SACV06-811CJC(AJWx)**PLAINTIFF** – *Trush Law Office**James M. Trush***DEFENSE** – *Sheppard Mullin Richter & Hampton, LLP**Greg S. Labate***Sahab v Posadas****Case No:** BC 324 331**PLAINTIFF** - *The Pearl Law Firm**Steven G. Pearl**Law Office of Robert E. Racine**Robert E. Racine***DEFENSE** - *Law Offices of Stanley R. Raskin**Stanley R. Raskin**Barnes Crosby Fitzgerald & Zeman LLP**William M. Crosby***Saidel v CBS Radio, Inc.****Case No:** CV07-02948**PLAINTIFF** – *Hinton, Alfert & Sumner**Aaron Kaufmann**David P. Pogrel***DEFENSE** – *Morgan, Lewis & Bockius**Rebecca Eisen**Theresa Mak***Salvador v PLS Checking****Case Number:** CV 08-00882**PLAINTIFF** - *Hamner Law Offices, APC**Christopher J Hamner***DEFENSE** - *Proskauer Rose LLP**Robert H Horn***Sanchez v Harry Singh & Sons Farming****Case No:** GIC872854**PLAINTIFF** - *Lorens & Associates, APLC**Tracee Lorens**Cadena Churchill LLP**Raul Cadena***DEFENSE** - *DLA Piper**Rick Storms, Amy Beckstead***Sandford v Time Warner Cable****Case No:** BC 356014**PLAINTIFF** – *Kinglsey & Kingsley APC**Kevin M. Zietz***DEFENSE** – *Morgan, Lewis & Bockius LLP**Carla J. Feldman, Jason S. Mills***Scott/Smith v BearCom****Case No:** 37-2007-00068223-CU-OE-CTL**PLAINTIFF** – *Cohelan & Khoury**Timothy D. Cohelan, Isam C. Khoury, Michael D. Singer,**Diana M. Khoury***DEFENSE** – *DLA Piper LLP (US)**Merrill F. Storms, Jr., Tonya M. Cross***SLC v Pacific States Industries****Case No:** 237576**PLAINTIFF** – *Littler Mendelson**Christopher Cobey***DEFENSE** – *Pacific States Industries**David Balter***Small v Brinderson****Case No:** 04CC00717**PLAINTIFF** - *Law Offices of Ellyn Moscovitz**Ellyn Moscovitz***DEFENSE** - *Atkinson, Andelson, Loya, Ruud & Romo**Christopher Andre***Smith v Claires Boutiques, Inc.****Case No:** BC378435**PLAINTIFF** – *Law Offices of Kenneth H. Yoon**Kenneth H. Yoon***DEFENSE** – *Morgan, Lewis & Bockius LLP**John D. Hayashi***Smith v GuardSystems****Case No:** BC384306**PLAINTIFF** - *Law Offices of Kevin T Barnes**Joseph Antonelli, Janelle Carney, Kevin Barnes, Gregg Lander***DEFENSE** - *Musick Peeler & Garrett**Elaine Vukadinovich***Smith v ShieldSecurity****Case No:** BC385635**PLAINTIFF** - *Kokozian & Nourmand LLP**Michael Nourmand**The Feldman Law Firm**Lee Feldman**Class Action Litigation Group**Rene Barge & Katie Odenbriet***DEFENSE** - *Bradley & Gmelich**Jaimee Wellerstein, Barry Bradley, Gary Bradley***Smith v The Children's Place****Case No:** BC328780**PLAINTIFF** - *Initiative Legal Group LLP**Marc Primo, Mark Yablonovich, Robert E. Byrnes***DEFENSE** - *Sheppard Mullin Richter & Hampton**Richard Simmons, Derek Havel***Solis v HiTech Collison****Case No:** BC336338**PLAINTIFF** - *Horton & Debolt**Laura Horton**Kesluk & Silverstein**Douglas Silverstein, Alexandra Steinberg***DEFENSE** - *Fine, Boggs & Perkins**Cory King*

Sprinklerfitters Local 669 v West Coast Fire Protection Services

Case No: 06AS04594

PLAINTIFF - Law Offices of Ellyn Moscovitz

Ellyn Moscovitz, Sharon Seidenstein

DEFENSE - Rediger, McHugh & Hubbert LLP

Robert Rediger

Stewart v Reebok

Case No: BC 317955

PLAINTIFF - Westrup Klick, LLP

Phillip Poliner

The Law Offices of Allan A. Sigel

DEFENSE - Cathcart Collins, LLP

Patrick Cathcart

Thompson v Culver Personnel

Case No: GIC 870940

PLAINTIFF - The Law Offices of Michael Carver

Michael Carver

DEFENSE - Stradling Yocca Carlson & Rauth

Bruce May

**Tapia v Mangen Group
(BurgerKing)**

Case Number: BC377114

PLAINTIFF - Aidikoff, Uhl & Bakhtiari

Philip Aidikoff, Robert Uhl, Ryan Bakhtiari

Law Offices of David G. Spivak

David Spivak

Law Offices of David Harrison

David Harrison

DEFENSE -Lewitt, Hackman, Shapiro, Marshall & Harlan

Sue Bendavid, Paul Bauducco

Throne v Citicorp Investment Services

Case No: CV 07-113-ABC(RZx)

PLAINTIFF - Initiative Legal Group LLP

Mark Yablonovich, Marc Primo, Shawn Westrick

DEFENSE - Gould & Associates

Michael A. Gould, Aarin A. Zeif

Tilden v Mastro's Ocean Club

Case No: 06 CC 00135

PLAINTIFF - Gould & Associates

Michael Gould, Aarin Zeif

DEFENSE - Ogletree Deakins

Beth Gunn

Tobin v The Rack, LLC

Case No: BC 366512

PLAINTIFF - Law Offices of Peter M. Hart

Peter M. Hart

Diversity Law Group

Larry W. Lee

DEFENSE - Knee Ross & Silverman

Lora Silverman

Tu v Rusco

Case No: BC 367842

PLAINTIFF - The Cullen Law Firm APC

Paul T. Cullen

The Ryan Law Firm PLC

Kelly F. Ryan

DEFENSE - Best, Best & Krieger LLP

G. Ross Trindle

Ubalde v Prudential

Case No: BC245149

PLAINTIFF - Spiro Moss Barness LLP

Ira Spiro, Justian Jusuf, Dennis Moss

DEFENSE - Thelen Reid Brown Raysman & Steiner, LLP

Thomas Hill

Valdivia v 3049 8th St

Case No:BC 361404

PLAINTIFF - Peter L. Weinberger and Associates, P.C.

Peter Weinberger

DEFENSE - Lewis Brisbois Bisgaard & Smith LLP

Patrick Stark

Walker v Bankers Life

Case No: 06-cv-06906

PLAINTIFF - The Quisenberry Law Firm

Robert Drexler

Werman Law Office

Douglas Werman

DEFENSE - Littler Mendelson

John A. Ybarra, Shanthi V. Gaur, Stephanie Seay Kelly, Tony R.

Skogen

Weber v Einstein Noah Restaurant

Case No: 37-2008-00077680-CO-OE-CTL

PLAINTIFF - Lorens & Associates, APLC

L. Tracee Lorens

Cadena Churchill, LLP

Raul Cadena

DEFENSE - Holme Roberts & Owens, LLP

Donald L. Samuels, Elizabeth H. Murphy, David Ball

Weizman v Principe

Case No: BC 379691

PLAINTIFF - Hamner Law Offices

Christopher J. Hamner, Kimberly A. Westmoreland

DEFENSE - Jones, Bell, Abbott, Fleming & Fitzgerald, LLP

Kevin K. Fitzgerald

Wells v Kelly & Assoc., Inc.

Case No: GIC862431

PLAINTIFF - Lorens & Associates APLC

Tracee Lorens

(CONTINUED FROM BELOW LEFT)

DEFENSE - Barker, Olmsted & Barnier

Christopher Olmsted

Whitaker v Cardinal Health

Case No: 37-2007-00078492-CU-OE-CTL

PLAINTIFF – *Lorens & Associates, APLC*

L. Tracee Lorens

DEFENSE – *Wilson Petty Kosmo & Turner, LLP*

Robin A. Wofford, Lois Kosch

Whitmill v PC Mall

Case No: BC 373935

PLAINTIFF – *Westrup Klick, LLP*

Phillip R. Poliner, Esq.

DEFENSE – *Jones Day*

Steven M. Zadravec, Esq.

Wilfred v Lube Pit Stop

Case No: BC 377538

PLAINTIFF – *Law Offices of Eli M. Kantor*

Eli M. Kantor

DEFENSE – *Margolis & Tisman*

Naki Irvin

Winzelberg v Liberty Mutual

Case No: CV 07-460

PLAINTIFF - *Initiative Legal Group LLP*

Monica Balderrama, Orlando Arellano

DEFENSE - *Sheppard, Mullin, Richter & Hampton LLP*

Geoffrey DeBoskey

Williams v AVTA Busdrivers

Case No: CV 08-02582 GW (AVRx)

CV 08-4282 GW (AGRx)

PLAINTIFF - *Initiative Legal Group LLP*

Matthew T. Theriault, Dina Livhits

DEFENSE – *Gleason & Favrote, LLP*

Paul M. Gleason, Torey J. Favarote

Williams v John Wheeler

Case No: 59035

PLAINTIFF – *Law Offices of Michael Carver*

Michael L. Carver

DEFENSE – *The Ison Law Group*

Elizabeth Ison

Wise v Factors

Case No: BC373911

PLAINTIFF – *Jennifer Kramer Legal, APC*

Jennifer Kramer, Judith Wiederhorn

DEFENSE – *Silver & Freedman, APLC*

Andrew Kaplan

Wu v SR Investment Group, Inc.

Case No: BC356245

PLAINTIFF - *Bander Law Firm LLP*

Joel R. Bander, Cathe L. Caraway-Howard

DEFENSE - *Fullbright & Jaworski LLP*

Jay J. Lee,

Exhibit B

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

Exhibit C



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Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	13280	Prepared By:	Michael Sutherland
Estimate Date:	5/3/2021	Direct Dial #	321.223.5067
		Email:	Msutherland@simpluris.com

Plaintiff Attorney
Attorney/Client: **Kyle Nordrehaug**
Firm: Blumenthal Nordrehaug & Bhowmik
Email: kyle@bamlawca.com

Defense Attorney
Attorney/Client:
Firm:
Email:

Case Name: Prometric: Opt Out Settlement

Anticipated Total Cost	\$6,707
Capped Fee*	\$6,500

Terms:

- 1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate
- .2) Included is a 2021 Federal 1120 tax return to account for banking activity in 2021.

Total Possible Class Size:	250	Undeliverable Rate:	15%
Response Rate:	1%	Call Rate:	N/A
Mailing Document Language:	English	Fund Distribution:	Simpluris
Reminder Postcard:	No	Redistribution:	No
Unclaimed Funds:	Cy Pres/2	State(s):	CA
		Tax Reporting Years	One

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$125.00	3	\$375.00
Database Manager - Initial Data Analysis	\$140.00	3	\$420.00
Total			\$795.00

Notification

Notice Packet: 4 pg Notice - Double Sided - English

Check Cashing Deadline Reminder.

Category	Unit Value	# of Units	Total
Mail Notice Packet	\$1.00	250	\$250.00
Postage	\$0.55	250	\$137.50
NCOA/CASS/LACS	\$50.00	1	\$50.00
Undeliverable Processing	\$0.25	38	\$9.38
Skip Trace RUM	\$1.50	38	\$56.25
Remail Notice Packet	\$1.50	32	\$47.81
Remail Postage	\$0.55	32	\$17.53
Mailing Supervisor	\$50.00	1	\$50.00
Total			\$618.47

Call Center

Establish Case Specific Toll Free Number

Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	2	\$150.00



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Administration

Process Mail, Opt-Outs or Objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	2	\$250.00
Resolving Mismatched TINs	\$75.00	1	\$75.00
Dispute/Deficiencies - Send One Cure Letter	\$2.50	3	\$6.25
Opt Out Processing	\$1.50	3	\$3.75
Data Entry	\$50.00	1	\$50.00
Project Manager	\$125.00	2	\$250.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$635.00

Distribution

Setup a Disbursement Account. Checks will have a legend for FLSA opt in upon execution/negotiation of the check.

Print & Mail Checks to Class Members: W2's / 1099's - File Reports with Appropriate Federal & State Taxing Authorities

Account Management & Reconciliation

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	4	\$560.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail Check	\$3.00	250	\$750.00
Postage	\$0.55	250	\$137.50
Process Returned Checks	\$0.50	3	\$1.25
Skip Trace Search Undeliverable Checks	\$5.00	3	\$12.50
Remail Checks (Includes Postage)	\$4.00	3	\$10.00
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$350.00	1	\$350.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee, 2021	\$750.00	1	\$750.00
Reissuing Checks/Mailing	\$5.00	4	\$18.75
Reissue W2's/1099's	\$5.00	4	\$18.75
Responding to IRS, State, Agency Inquiries	\$75.00	1	\$75.00
Escheat management-State	\$250.00	1	\$250.00
Disbursement Manager	\$125.00	4	\$500.00
Total			\$4,358.75



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Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$300.00

Postage \$292.53

Total Case Costs

\$6,707.22

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

EXHIBIT #7

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (SBN 068687)

Kyle R. Nordrehaug (SBN 205975)

Aparajit Bhowmik (SBN 248066)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SARAH ARMSTRONG and ROBERT
WALLACE, individuals, on behalf of themselves
and on behalf of all persons similarly situated,

Plaintiffs,

v.

PROMETRIC LLC, a Limited Liability
Company, and DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV29967

**DECLARATION OF SARAH
ARMSTRONG IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: August 18, 2021

Hearing Time: 9:00 a.m.

Judge: Hon. Maren E. Nelson

Dept.: SS-17

Action Filed: April 7, 2020

Trial date: None Set

1 I, Sarah Armstrong, declare as follows:

2 1. I am over the age of eighteen, a Plaintiff and a proposed Class Representative in the
3 above-entitled matter. I submit this declaration in support of the Motion for Preliminary
4 Approval of Class Action Settlement and in support of my application for a class representative
5 service award.
6

7 2. I have personal knowledge of all the facts stated herein. I could and would competently
8 testify under oath to these facts in court if requested to do so.

9 3. I worked for Defendant Prometric LLC ("Prometric") in California from December of
10 2018 to April of 2020 and I was classified by Prometric as a non-exempt employee during that
11 time period.
12

13 4. I retained the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP, who are
14 experienced in both class action litigation and claims against employers for violations of the
15 California Labor Code. I have no personal relationship or family ties to my attorneys or any
16 officer of the Court. I am not involved in any litigation against another member of the class in
17 this case and my attorneys are not working on my behalf in another capacity other than
18 representing me in this lawsuit.

19 5. I decided to file this class action lawsuit for the benefit of myself and other current
20 and former non-exempt employees who worked for Prometric and be a class representative
21 because I felt that my legal rights as an employee and others like me were violated. For example,
22 Prometric failed to provide me all required meal and rest periods and also failed to pay me any
23 meal or rest period penalty payments. I was also required to work off the clock, such as when I
24 clocked out but spent time setting the alarm system before exiting. Prior to clocking in I had to
25 spend time booting the computer up. I was also contacted by my supervisors when I was off the
26

1 clock via the “When I work” app for scheduling issues. I was not paid minimum and overtime
2 wages I was entitled to as a result of this off the clock work. I was also not reimbursed for using
3 my cell phone for work related purposes, such as when my supervisors contacted me off hours
4 regarding scheduling or other work-related issues.

5
6 6. This class action case was filed on April 7, 2020. Before the complaint was filed I
7 spoke to my attorneys several times and discussed how Prometric implemented its company
8 policies and procedures. I also assisted my attorneys in their investigation into my claims by
9 providing them documents and answering their questions. I reviewed the complaint before it
10 was filed and after it was filed I was given access to an electronic file sharing program that
11 alerted me via email when important documents were filed so that I could review them and keep
12 up with the developments in the case which I understood was one of my duties as a class
13 representative. I would also call my attorneys from time to time if I had any questions about the
14 case. My attorneys were regularly available when I contacted them.

15
16 7. Even though this action is in the process of settling, I was and remain prepared to
17 perform all the duties of a class representative. I understand that as a class representative I have
18 assumed a fiduciary responsibility to prosecute this class action on behalf of the absent non-
19 exempt employees who worked for Prometric during the class period. I have understood that as
20 a fiduciary, I have a duty to prosecute this action for the benefit of the members of the class and
21 surrender any right to compromise the group action for an individual gain.

22
23 8. I understood that being a plaintiff/class representative in this case meant that I
24 was seeking damages not only for myself but also other current and/or former non-exempt
25 employees working for Prometric in California. I felt that this group of current and former
26 employees were not aware of their labor law rights and even if they were they would probably be

1 apprehensive about speaking up or even simply because of the time, effort and risk involved in
2 filing a class action lawsuit.

3 9. I understood that being a part of this lawsuit involved risks. For example, my
4 attorneys explained to me that if the case went to trial and we lost, I could be held responsible to
5 pay for all or part of the attorney fees and costs paid by Prometric to defend this lawsuit. Also, I
6 knew there was a risk that future employers, if they ever found out about this lawsuit, could hold
7 it against me or downgrade me as a potential hire. As one of only two named Plaintiffs in this
8 action it would not be difficult for a future employer to become aware that I sued a former
9 employer for labor law violations. Ultimately I decided these risks were worth it and decided to
10 fight for my rights and the rights of others regardless of the risks, time and effort I spent on this
11 case.
12

13
14 10. During the lawsuit I stayed in touch with my attorneys by phone and email. I also
15 kept up to date on important developments by reviewing court filings that were made available to
16 me electronically as I described above.

17 11. A mediation took place on March 3, 2021 with David Rotman, an experienced
18 mediator of wage and hour class actions. Following the all-day mediation session, the parties
19 agreed to settle the action. I spoke with my attorneys regarding the terms of the settlement which
20 was reached between the parties and understood that I was representing absent class members
21 and therefore wanted the best possible result to be obtained for the class and I believe a very
22 positive result was in fact achieved via settlement. I reviewed and signed the Memorandum of
23 Understanding on April 2, 2021 and when the final settlement papers were ready, I again spoke
24 with my attorneys to review the Settlement Agreement which I signed on July 20, 2021.
25

26 12. I have been actively involved with this class action lawsuit performing the duties
27

1 described above. Although I did not keep time records, I was in regular contact with my
2 attorneys, reviewed important court filings and spent a significant amount of time on the issues
3 presented during the lawsuit and in the settlement process. I estimate that I spent approximately
4 40-50 hours working on this case. My understanding is that future tasks may require additional
5 hours of my time. I believe I have been diligent and have done what is expected of a named
6 plaintiff and proposed class representative to date, and will continue to do so. I have and always
7 will maintain the best interest of the class.
8

9 13. My attorneys explained to me that the settlement process involves a two-step
10 review by the Court to determine whether the settlement is fair before approving the settlement.
11 I know this process also involves notifying all class members of the settlement terms and of their
12 rights to make a claim for their settlement share, to opt out of the settlement or to object to the
13 settlement.
14

15 14. I believe I did the right thing by filing this case on behalf of the class who are in
16 line to receive monetary payments as a result of this case and settlement. I also believe that the
17 requested service award of \$10,000 from the settlement is fair compensation for the work I
18 performed and the risks I undertook.
19

20 15. As part of the settlement it was necessary for me to sign a general release of all
21 claims I may have against the Prometric. I believe the service award I have requested provides
22 me with some compensation for this agreed release.
23

24 16. I have not entered into any undisclosed agreements nor have I received any
25 undisclosed compensation in this case. The only compensation I will receive is whatever amount
26 the Court awards as a service award, as well as my share as a class member of the settlement
27 fund.
28

17. In light of all the time and effort I have spent on this case, the risk I undertook by suing a former employer, the exposure to being responsible for paying Prometric's costs in the event we did not win the case, the reputational risk that future employers may hold this lawsuit against me, the general release, and in light of the size of the settlement, I believe the request for \$10,000 as a class representative service award is fair and reasonable.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Jul 26, 2021, at Los Angeles, CA.
(city, state)


Sarah G. Armstrong (Jul 26, 2021 11:57 PDT)

Sarah Armstrong

EXHIBIT #8

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (SBN 068687)

2 Kyle R. Nordrehaug (SBN 205975)

Aparajit Bhowmik (SBN 248066)

3 2255 Calle Clara

La Jolla, CA 92037

4 Telephone: (858) 551-1223

Facsimile: (858) 551-1232

5 Attorneys for Plaintiff

6
7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10
11 SARAH ARMSTRONG and ROBERT
WALLACE, individuals, on behalf of themselves)
12 and on behalf of all persons similarly situated,

13 Plaintiffs,

14 v.

15 PROMETRIC LLC, a Limited Liability
Company, and DOES 1 through 50, inclusive,

16 Defendants.

Case No. **20STCV29967**

17 } **DECLARATION OF ROBERT**
18 } **WALLACE IN SUPPORT OF**
19 } **MOTION FOR PRELIMINARY**
20 } **APPROVAL OF CLASS ACTION**
21 } **SETTLEMENT**

Hearing Date: August 18, 2021

Hearing Time: 9:00 a.m.

Judge: Hon. Maren E. Nelson

Dept.: SS-17

Action Filed: April 7, 2020

Trial date: None Set

1 I, Robert Wallace, declare as follows:

2 1. I am over the age of eighteen, a Plaintiff and a proposed Class Representative in the
3 above-entitled matter. I submit this declaration in support of the Motion for Preliminary
4 Approval of Class Action Settlement and in support of my application for a class representative
5 service award.
6

7 2. I have personal knowledge of all the facts stated herein. I could and would competently
8 testify under oath to these facts in court if requested to do so.

9 3. I worked for Defendant Prometric LLC ("Prometric") in California from June of 2019 to
10 November of 2019 and I was classified by Prometric as a non-exempt employee during that time
11 period.
12

13 4. I retained the law firm of Blumenthal Nordrehaug Bhowmik DeBlouw LLP, who are
14 experienced in both class action litigation and claims against employers for violations of the
15 California Labor Code. I have no personal relationship or family ties to my attorneys or any
16 officer of the Court. I am not involved in any litigation against another member of the class in
17 this case and my attorneys are not working on my behalf in another capacity other than
18 representing me in this lawsuit.

19 5. I decided to file this class action lawsuit for the benefit of myself and other current
20 and former non-exempt employees who worked for Prometric and be a class representative
21 because I felt that my legal rights as an employee and others like me were violated. For example,
22 Prometric failed to provide me all required meal and rest periods and also failed to pay me any
23 meal or rest period penalty payments. I was also required to work off the clock, such as when I
24 clocked out but spent time setting the alarm system before exiting. Prior to clocking in I had to
25 spend time booting the computer up. I was also contacted by my supervisors when I was off the
26

1 clock via the "When I work" app for scheduling issues. I was not paid minimum and overtime
2 wages I was entitled to as a result of this off the clock work. I was also not reimbursed for using
3 my cell phone for work related purposes, such as when my supervisors contacted me off hours
4 regarding scheduling or other work-related issues.

5
6 6. This class action case was filed on April 7, 2020. Before the complaint was filed I
7 spoke to my attorneys several times and discussed how Prometric implemented its company
8 policies and procedures. I also assisted my attorneys in their investigation into my claims by
9 providing them documents and answering their questions. I reviewed the complaint before it
10 was filed and after it was filed I was given access to an electronic file sharing program that
11 alerted me via email when important documents were filed so that I could review them and keep
12 up with the developments in the case which I understood was one of my duties as a class
13 representative. I would also call my attorneys from time to time if I had any questions about the
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16 7. Even though this action is in the process of settling, I was and remain prepared to
17 perform all the duties of a class representative. I understand that as a class representative I have
18 assumed a fiduciary responsibility to prosecute this class action on behalf of the absent non-
19 exempt employees who worked for Prometric during the class period. I have understood that as
20 a fiduciary, I have a duty to prosecute this action for the benefit of the members of the class and
21 surrender any right to compromise the group action for an individual gain.

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23 8. I understood that being a plaintiff/class representative in this case meant that I
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26 employees were not aware of their labor law rights and even if they were they would probably be

1 apprehensive about speaking up or even simply because of the time, effort and risk involved in
2 filing a class action lawsuit.

3 9. I understood that being a part of this lawsuit involved risks. For example, my
4 attorneys explained to me that if the case went to trial and we lost, I could be held responsible to
5 pay for all or part of the attorney fees and costs paid by Prometric to defend this lawsuit. Also, I
6 knew there was a risk that future employers, if they ever found out about this lawsuit, could hold
7 it against me or downgrade me as a potential hire. As one of only two named Plaintiffs in this
8 action it would not be difficult for a future employer to become aware that I sued a former
9 employer for labor law violations. Ultimately I decided these risks were worth it and decided to
10 fight for my rights and the rights of others regardless of the risks, time and effort I spent on this
11 case.
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14 10. During the lawsuit I stayed in touch with my attorneys by phone and email. I also
15 kept up to date on important developments by reviewing court filings that were made available to
16 me electronically as I described above.

17 11. A mediation took place on March 3, 2021 with David Rotman, an experienced
18 mediator of wage and hour class actions. Following the all-day mediation session, the parties
19 agreed to settle the action. I spoke with my attorneys regarding the terms of the settlement which
20 was reached between the parties and understood that I was representing absent class members
21 and therefore wanted the best possible result to be obtained for the class and I believe a very
22 positive result was in fact achieved via settlement. I reviewed and signed the Memorandum of
23 Understanding on April 2, 2021 and when the final settlement papers were ready, I again spoke
24 with my attorneys to review the Settlement Agreement which I signed on July 20, 2021.
25

26 12. I have been actively involved with this class action lawsuit performing the duties
27

1 described above. Although I did not keep time records, I was in regular contact with my
2 attorneys, reviewed important court filings and spent a significant amount of time on the issues
3 presented during the lawsuit and in the settlement process. I estimate that I spent approximately
4 40-50 hours working on this case. My understanding is that future tasks may require additional
5 hours of my time. I believe I have been diligent and have done what is expected of a named
6 plaintiff and proposed class representative to date, and will continue to do so. I have and always
7 will maintain the best interest of the class.
8

9 13. My attorneys explained to me that the settlement process involves a two-step
10 review by the Court to determine whether the settlement is fair before approving the settlement.
11 I know this process also involves notifying all class members of the settlement terms and of their
12 rights to make a claim for their settlement share, to opt out of the settlement or to object to the
13 settlement.
14

15 14. I believe I did the right thing by filing this case on behalf of the class who are in
16 line to receive monetary payments as a result of this case and settlement. I also believe that the
17 requested service award of \$10,000 from the settlement is fair compensation for the work I
18 performed and the risks I undertook.

19 15. As part of the settlement it was necessary for me to sign a general release of all
20 claims I may have against the Prometric. I believe the service award I have requested provides
21 me with some compensation for this agreed release.
22

23 16. I have not entered into any undisclosed agreements nor have I received any
24 undisclosed compensation in this case. The only compensation I will receive is whatever amount
25 the Court awards as a service award, as well as my share as a class member of the settlement
26 fund.
27

17. In light of all the time and effort I have spent on this case, the risk I undertook by suing a former employer, the exposure to being responsible for paying Prometric's costs in the event we did not win the case, the reputational risk that future employers may hold this lawsuit against me, the general release, and in light of the size of the settlement, I believe the request for \$10,000 as a class representative service award is fair and reasonable.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Jul 26, 2021, at Glendale, Ca.
(city, state)


Robert Wallace (Jul 26, 2021 11:31 PDT)

Robert Wallace